

HOUSE BILL 264

Introduced by Cobb

1/19	Introduced
1/20	Referred to Natural Resources
1/20	First Reading
1/21	Fiscal Note Requested
1/27	Fiscal Note Received
1/29	Fiscal Note Printed
2/12	Hearing
2/12	Tabled in Committee

1 House BILL NO. 264
2 INTRODUCED BY Cobb
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REORGANIZING THE
5 NATURAL RESOURCE AND ENVIRONMENTAL FUNCTIONS OF THE BOARD,
6 DIRECTOR, AND DEPARTMENT OF HEALTH AND ENVIRONMENTAL
7 SCIENCES; THE BOARD, DIRECTOR, AND DEPARTMENT OF NATURAL
8 RESOURCES AND CONSERVATION; AND THE BOARD OF STATE LAND
9 COMMISSIONERS AND THE COMMISSIONER AND DEPARTMENT OF STATE
10 LANDS; RENAMING THE BOARD, DIRECTOR, AND DEPARTMENT OF
11 HEALTH AND ENVIRONMENTAL SCIENCES AND THE BOARD, DIRECTOR,
12 AND DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION;
13 PROVIDING FOR THE POWERS, DUTIES, AND FUNCTIONS OF THESE
14 AGENCIES; AMENDING SECTIONS 2-15-2107, 2-15-3302, 17-5-101,
15 17-5-202, 40-6-128, 75-10-103, 75-10-203, 75-10-404,
16 75-20-104, 75-20-202, 75-20-205, 75-20-208, 75-20-211,
17 75-20-213, 75-20-215, 75-20-216, 75-20-218, 75-20-219,
18 75-20-220, 75-20-221, 75-20-225, 75-20-226, 75-20-301,
19 75-20-302, 75-20-303, 75-20-304, 75-20-402, 75-20-406,
20 75-20-501, 75-20-1202, 76-15-103, 80-8-110, 81-23-103,
21 82-4-103, 82-4-111, 82-4-112, 82-4-123, 82-4-129, 82-4-203,
22 82-4-204, 82-4-205, 82-4-223, 82-4-227, 82-4-321, 82-4-337,
23 82-4-362, 82-4-421, 82-4-422, 82-4-425, 82-4-427, 85-1-102,
24 85-1-203, 85-1-205, 85-1-223, 85-2-512, 85-2-514, 85-9-104,
25 85-9-202, 85-9-204, AND 90-15-102, MCA; AND PROVIDING

1 EFFECTIVE DATES."

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 NEW SECTION. **Section 1. Functions of board, director,**
5 **and department of health and environmental sciences**
6 **transferred to board, director, or department of natural**
7 **resources and environment. (1) The following functions of**
8 **the board, department, and director of health and**
9 **environmental sciences are transferred to the board,**
10 **department, or director of natural resources and**
11 **environment, as appropriate, as established in 2-15-3302 and**
12 **2-15-3301, respectively:**

13 (a) relating to jurisdiction over lands within the
14 state under 2-1-202 and 2-1-209;

15 (b) membership on the Flathead basin commission under
16 2-15-213;

17 (c) relating to issuance of certificates to members of
18 the water and wastewater operators' advisory council under
19 2-15-2105;

20 (d) membership on the petroleum tank release
21 compensation board under 2-15-2108;

22 (e) relating to the enforcement of department rules by
23 the board of a refuse disposal district under 7-13-215 and
24 75-10-112;

25 (f) relating to determinations concerning the use of

1 air pollution control equipment under 15-6-135;
 2 (g) adoption of standards for measuring the efficiency
 3 of wood stoves under 15-32-102 and 15-32-203;
 4 (h) relating to certification of water and wastewater
 5 treatment plant operators under Title 37, chapter 42;
 6 (i) relating to environmental protection under Title
 7 75;
 8 (j) relating to the regulation of subdivisions under
 9 Title 76, chapters 3 and 4;
 10 (k) compliance with the department of state lands'
 11 schedules for onsite consultation for timber sales under
 12 76-13-132;
 13 (l) consultation with the board of land commissioners
 14 for the purpose of accepting grants of federal land under
 15 77-1-211;
 16 (m) consultation with the board of land commissioners
 17 for the purpose of disposing of institutional property under
 18 77-2-302;
 19 (n) relating to the regulation of pesticides under
 20 Title 80, chapter 8;
 21 (o) relating to the regulation of agricultural
 22 chemicals under Title 80, chapter 15;
 23 (p) approval of the means of disposal of wastewater,
 24 sewage, and air pollutants before the construction or
 25 remodeling of a dairy products manufacturing plant under

1 81-22-403;
 2 (q) investigation of the obstruction of streams by
 3 beaver dams under 87-1-224;
 4 (r) approval of rules governing the use of lands and
 5 waters under 87-1-303; and
 6 (s) relating to the natural resources information
 7 system under Title 90, chapter 15.
 8 (2) All references to the "board of health and
 9 environmental sciences" or "board" (of health and
 10 environmental sciences), "department of health and
 11 environmental sciences" or "department" (of health and
 12 environmental sciences), or "director of health and
 13 environmental sciences" or "director" (of health and
 14 environmental sciences) in those titles, chapters, parts,
 15 and sections referred to in subsection (1) are changed to
 16 "board of natural resources and environment" or "board" (of
 17 natural resources and environment), "department of natural
 18 resources and environment" or "department" (of natural
 19 resources and environment), or "director of natural
 20 resources and environment" or "director" (of natural
 21 resources and environment), as appropriate. The code
 22 commissioner shall conform internal references and grammar
 23 to these changes.
 24 (3) The governor may by executive order assign to the
 25 board of natural resources and environment or to the

department of natural resources and environment in a manner consistent with [sections 1 through 71] functions allocated to the board or department of natural resources and conservation by the 53rd legislature and not transferred by [sections 1 through 71].

NEW SECTION. **Section 2.** Functions of board of land commissioners and department and commissioner of state lands transferred to board, department, or director of natural resources and environment. (1) Except as otherwise provided in [sections 1 through 71], the following functions of the board of land commissioners, the department of state lands, and the commissioner of state lands are transferred to the board of natural resources and environment, the department of natural resources and environment, or the director of natural resources and environment, as appropriate, as established in 2-15-3302 and 2-15-3301, respectively:

(a) relating to reclamation of mined lands under Title 82, chapter 4;

(b) relating to coal mining impacts under Title 90, chapter 6, part 2; and

(c) relating to hard-rock mining impacts under Title 90, chapter 6, part 3.

(2) Except as otherwise provided in [sections 1 through 71], any references to the "board of land commissioners" or "board" (of land commissioners), "department of state lands"

or "department" (of state lands), or "commissioner of state lands" or "commissioner" (of state lands) in those titles, chapters, parts, and sections referred to in subsection (1) are changed to "board of natural resources and environment" or "board" (of natural resources and environment), "department of natural resources and environment" or "department" (of natural resources and environment) or "director of natural resources and environment" or "director" (of natural resources and environment), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

(3) (a) All functions of the state board of land commissioners relating to the reclamation of mined lands under Title 82, chapter 4, except the adoption of administrative rules, are transferred to the department of natural resources and environment.

(b) All references to the "board of land commissioners" or "board" (of land commissioners) in Title 82, chapter 4, except with respect to the adoption of administrative rules, are changed to the "department of natural resources and environment" or "department" (of natural resources and environment), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

(c) The governor may by executive order assign to the department of natural resources and environment in a manner

consistent with [sections 1 through 71] functions of the board of land commissioners, other than the adoption of administrative rules, relating to the reclamation of mined lands allocated to the board of land commissioners and not transferred by [sections 1 through 71].

(4) The governor may by executive order assign to the board or department of natural resources and environment in a manner consistent with [sections 1 through 71] functions allocated to the board of land commissioners or to the department or commissioner of state lands by the 53rd legislature and not transferred by [sections 1 through 71].

NEW SECTION. Section 3. Functions of board, department, and director of natural resources and conservation transferred to board of land commissioners or commissioner or department of state lands. (1) Except as otherwise provided in [sections 1 through 71], the following functions of the board, department, and director of natural resources and conservation are transferred to the board of land commissioners, the department of state lands, or the commissioner of state lands, as appropriate, as established in Article X, section 4, of the Montana constitution and 2-15-3201 and 2-15-3202, respectively:

(a) appointment of a soil survey advisory council under 2-15-3306;

(b) exemption from payment of property taxes under

15-6-205;

(c) relating to the wastewater treatment program and revolving fund under Title 75, chapter 5, part 11;

(d) relating to conservation districts under Title 76, chapter 15;

(e) relating to state-owned water projects and the water development program under 85-1-102 and Title 85, chapter 1, parts 2 through 6;

(f) relating to water users' associations under 85-6-109; and

(g) relating to resource development and reclamation under Title 90, chapter 2.

(2) Except as otherwise provided in [sections 1 through 71], any references to the "board of natural resources and conservation" or "board" (of natural resources and conservation), "department of natural resources and conservation" or "department" (of natural resources and conservation), or "director of natural resources and conservation" or "director" (of natural resources and conservation) in those titles, chapters, parts, and sections referred to in subsection (1) are changed to "board of land commissioners" or "board" (of land commissioners), "department of state lands" or "department" (of state lands), or "commissioner of state lands" or "commissioner" (of state lands), as appropriate. The code commissioner

1 shall conform internal references and grammar to these
2 changes.

3 (3) The governor may by executive order assign to the
4 board of land commissioners and to the department of state
5 lands in a manner consistent with [sections 1 through 71]
6 any functions allocated to the department or board of
7 natural resources and conservation by the 53rd legislature
8 and not transferred by [sections 1 through 71].

9 NEW SECTION. Section 4. Department, director, and
10 board changed -- instructions to code commissioner. (1) The
11 names of the department and the director of health and
12 environmental sciences are changed to the department and
13 director of public health, respectively. Unless inconsistent
14 with [sections 1 through 71], wherever the terms "department
15 of health and environmental sciences" or "department" (of
16 health and environmental sciences) or "director of health
17 and environmental sciences" or "director" (of health and
18 environmental sciences) appears in the Montana Code
19 Annotated, the code commissioner shall change the name to
20 the "department of public health" or "department" (of public
21 health) or to the "director of public health" or "director"
22 (of public health), as appropriate, and conform internal
23 references and grammar to these changes.

24 (2) The name of the board of health and environmental
25 sciences is changed to the board of public health. Unless

1 inconsistent with [sections 1 through 71], wherever the term
2 "board of health and environmental sciences" or "board" (of
3 health and environmental sciences) appears in the Montana
4 Code Annotated, the code commissioner shall change the name
5 to the "board of public health" or "board" (of public
6 health) and conform internal references and grammar to these
7 changes.

8 (3) The names of the department and the director of
9 natural resources and conservation are changed to the
10 department and director of natural resources and
11 environment, respectively. Unless inconsistent with
12 [sections 1 through 71], wherever the terms "department of
13 natural resources and conservation" or "department" (of
14 natural resources and conservation) or "director of natural
15 resources and conservation" or "director" (of natural
16 resources and conservation) appear in the Montana Code
17 Annotated, the code commissioner shall change the names to
18 the "department of natural resources and environment" or
19 "department" (of natural resources and environment) or
20 "director of natural resources and environment" or
21 "director" (of natural resources and environment), as
22 appropriate, and conform internal references and grammar to
23 these changes.

24 (4) The name of the board of natural resources and
25 conservation is changed to the board of natural resources

and environment. Unless inconsistent with [sections 1 through 71], wherever the terms "board of natural resources and conservation" or "board" (of natural resources and conservation) appear in the Montana Code Annotated, the code commissioner shall change the names to the "board of natural resources and environment" or "board" (of natural resources and environment) and conform internal references and grammar to these changes.

Section 5. Section 2-15-2107, MCA, is amended to read:

"2-15-2107. Water pollution control advisory council.

(1) There is a water pollution control advisory council.

(2) The council consists of eleven members. The members are:

(a) the director of fish, wildlife, and parks;

(b) the ~~administrator--of-the-water-resources-division~~ director of the department of natural resources and conservation environment;

(c) the director of agriculture;

(d) eight members appointed by the governor as follows:

(i) a representative of industry concerned with the disposal of inorganic waste;

(ii) a representative of industry concerned with the disposal of organic waste;

(iii) a livestock feeder;

(iv) a representative of municipal government;

(v) a representative of an organization concerned with fishing for sport;

(vi) a representative from labor;

(vii) a supervisor of a soil and water conservation district;

(viii) a representative of an organization concerned with water recreation.

(3) The appointed council members serve at the pleasure of the governor.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and members."

Section 6. Section 2-15-3302, MCA, is amended to read:

"2-15-3302. Board of natural resources and conservation environment -- composition -- quasi-judicial. (1) There is a board of natural resources and conservation environment.

(2) The board is composed of seven members, appointed by the governor as prescribed in 2-15-124, informed and experienced in the subjects of natural resources and conservation environment.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) In addition to carrying out its functions as provided by law, the board shall act in an advisory capacity

to the department in all other matters."

Section 7. Section 17-5-101, MCA, is amended to read:

"17-5-101. Definitions. The following terms, as used in this part, have the following meanings:

(1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(3) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state but shall not include the state of Montana--the board of examiners, the division of water resources of the department--of--natural--resources and conservation--the state highway commission, or any other board, agency, or commission of the state."

Section 8. Section 17-5-202, MCA, is amended to read:

"17-5-202. Definitions. The following terms, wherever used or referred to in this part, have the following meanings:

(1) "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all instruments or obligations payable from a special fund.

(2) "Public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state or any commission, authority, or agency of a political or governmental subdivision, and also includes the board of public education, the board of regents of higher education, the board of examiners, the board of natural resources and conservation environment, the state highway commission, the board of land commissioners, or any other governmental agency of this state."

Section 9. Section 40-6-128, MCA, is amended to read:

"40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock

1 and the mother executes or proposes to execute a release
 2 terminating her the mother's rights to the child or if the
 3 child otherwise becomes the subject of an adoption
 4 proceeding, the agency or person to whom the child has been
 5 or is to be relinquished or the mother or person having
 6 custody of the child shall file a petition in the district
 7 court to terminate the parental rights of the father, unless
 8 the father's relationship to the child has been previously
 9 terminated or determined not to exist by the court. The
 10 court shall hold a hearing as soon as practical to determine
 11 the identity of the father and to determine or terminate the
 12 rights of the father as provided in this section and in
 13 40-6-129 and 40-6-130. This section is not applicable if the
 14 father is a person whose consent to adoption is not required
 15 under 40-8-111.

16 (2) Proof of service of a notice of intent to release
 17 or the putative father's verified acknowledgment of notice
 18 of intent to release shall be filed with the court, if such
 19 notice was given to the putative father. The court shall
 20 request the records ~~and-statistics~~ bureau of the department
 21 of public health and-environmental-sciences to send to the
 22 court a copy of any notice of intent to claim paternity of
 23 the particular child which the bureau has received.

24 (3) If the mother has failed to name a putative father
 25 or has failed to file a notice of intent to release, the

1 court shall cause inquiry to be made of the mother in an
 2 effort to identify the natural father. The inquiry shall
 3 include the following:

4 (a) whether the mother was married at the time of
 5 conception of the child or at any time ~~thereafter~~ after
 6 conception;

7 (b) whether the mother was cohabiting with a man at the
 8 time of conception or birth of the child;

9 (c) whether the mother has received support payments or
 10 promises of support payments with respect to the child or in
 11 connection with her the mother's pregnancy; or

12 (d) whether any man has formally or informally
 13 acknowledged or declared his possible paternity of the
 14 child.

15 (4) Notwithstanding this section or any other
 16 provisions of law and in consideration of her the mother's
 17 right to privacy, ~~no~~ a mother of a child who is the subject
 18 of proceedings under this part may not be compelled to
 19 testify concerning or to divulge the identity of the father
 20 or possible father of that child.

21 (5) Notice of the hearing shall be served upon the
 22 following persons in the manner appropriate under the
 23 Montana Rules of Civil Procedure or any manner which the
 24 court shall direct:

25 (a) a putative father who has timely filed a notice of

1 intent to claim paternity as provided in 40-6-126 or
2 40-6-127;

3 (b) a putative father who has not been served with a
4 notice of intent to release at least 30 days before the
5 expected date of delivery specified in the notice of intent
6 to release;

7 (c) any other male who was not served pursuant to
8 40-6-127(2) with a notice of intent to release and who the
9 court, after inquiry of the mother or any other appropriate
10 person, has reason to believe may be the father of the
11 child.

12 (6) The notice of hearing ~~shall~~ must inform the
13 putative father that his failure to appear at the hearing
14 constitutes a denial of ~~his~~ the putative father's interest
15 in custody of the child, which denial will result in the
16 court's termination of ~~his~~ the putative father's rights to
17 the child.

18 (7) Proof of service of the notice of hearing required
19 by subsection (5) shall be filed with the court. A verified
20 acknowledgment of service by the party to be served is proof
21 of personal service. Notice of hearing need not be required
22 if the putative father is present at the hearing. A waiver
23 of notice of hearing by a person entitled to receive it is
24 sufficient. If no person has been identified as the natural
25 father or possible father, the court, on the basis of all

1 information available, shall determine whether publication
2 or public posting of notice of the proceeding is likely to
3 lead to identification and if so shall order publication or
4 public posting at the times and places and in the manner it
5 considers appropriate. The name of the natural mother may be
6 included in such the publication only with her the mother's
7 written consent.

8 (8) At the hearing, the court shall receive evidence as
9 to the identity of the father of the child. Based upon the
10 evidence received and the court's inquiry, the court shall
11 enter a finding identifying the father or declaring that the
12 identity of the father cannot be determined.

13 (9) If the court finds that the father of the child is
14 a person who did not receive either a timely notice of
15 intent to release pursuant to 40-6-127 or a notice required
16 pursuant to subsection (5) of this section and who has not
17 waived ~~his~~ the right to notice of hearing and is not present
18 at the hearing, the court shall adjourn further proceedings
19 until that person is served with a notice of hearing."

20 **Section 10.** Section 75-10-103, MCA, is amended to read:

21 "75-10-103. Definitions. Unless the context clearly
22 requires otherwise, in this part, the following definitions
23 apply:

24 (1) "Board" means the board of ~~health-and-environmental~~
25 sciences natural resources and environment provided for in

2-15-2104 2-15-3302.

(2) "Department" means the department of health--and ~~environmental--sciences~~ natural resources and environment provided for in Title 2, chapter 15, part 21 33.

(3) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(4) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(5) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(6) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(8) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(9) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(10) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(11) "State solid waste plan" means the statewide plan

formulated by the department as authorized by this part."

Section 11. Section 75-10-203, MCA, is amended to read:

"75-10-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health-and-environmental sciences~~ natural resources and environment provided for in ~~2-15-2104~~ 2-15-3302.

(2) "Department" means the department of ~~health--and environmental--sciences~~ natural resources and environment provided for in Title 2, chapter 15, part ~~21~~ 33.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences,

hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(11) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants,

1 water supply treatment plants, or air pollution control
2 facilities; construction and demolition wastes; dead
3 animals, including offal; discarded home and industrial
4 appliances; and wood products or wood byproducts and inert
5 materials. "Solid waste" does not mean municipal sewage,
6 industrial wastewater effluents, mining wastes regulated
7 under the mining and reclamation laws administered by the
8 department of state lands, slash and forest debris regulated
9 under laws administered by the department of state lands, or
10 marketable byproducts.

11 (12) "Solid waste management system" means a system
12 which controls the storage, treatment, recycling, recovery,
13 or disposal of solid waste.

14 (13) "Storage" means the actual or intended containment
15 of wastes, either on a temporary basis or for a period of
16 years.

17 (14) "Transport" means the movement of wastes from the
18 point of generation to any intermediate points and finally
19 to the point of ultimate storage or disposal.

20 (15) "Treatment" means a method, technique, or process,
21 including neutralization, designed to change the physical,
22 chemical, or biological character or composition of any
23 solid waste so as to neutralize the waste or so as to render
24 it safer for transport, amenable for recovery, amenable for
25 storage, or reduced in volume."

1 **Section 12.** Section 75-10-404, MCA, is amended to read:

2 "75-10-404. Powers of department. (1) The department
3 may:

4 (a) administer and enforce the provisions of this part,
5 rules implementing this part, and orders and permits issued
6 pursuant to this part;

7 (b) conduct and publish studies on hazardous wastes and
8 hazardous waste management;

9 (c) initiate, conduct, and support research,
10 demonstration projects, and investigation, as its resources
11 may allow, and coordinate state agency research programs
12 pertaining to hazardous waste management;

13 (d) accept and administer grants from the federal
14 government and from other sources, public and private; and

15 (e) abate public nuisances that affect the public
16 health and welfare or the environment and that arise from or
17 in connection with the past or present handling or disposal
18 of any hazardous waste or regulated substance.

19 (2) The department shall integrate all provisions of
20 this part with other laws administered by the department to
21 avoid unnecessary duplication. Furthermore, the department
22 shall coordinate its activities under this part with the
23 program administered by the department of agriculture under
24 the Montana Pesticides Act; ~~the programs administered by the~~
25 ~~department of state lands related to mining and mine~~

reclamation, and the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. The integration and coordination shall must be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 13. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation environment provided for in 2-15-3302.

~~(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(6)~~(5) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

~~(7)~~(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection ~~(10)~~ (8), including upgrading to a design capacity covered by subsection ~~(10)(b)~~ (8)(b), except that the term does not include normal maintenance or repair of an existing facility.

~~(8)(7)~~ "Department" means the department of natural resources and conservation environment provided for in Title 2, chapter 15, part 33.

~~(9)--"Department-of--health"--means--the--department--of health--and--environmental--sciences--provided-for-in--Title-2, chapter-15, part-21--~~

~~(10)(8)~~ "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health--and--environmental sciences natural resources and environment added to an existing plant) having an estimated cost in excess of \$10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an

estimated cost in excess of \$10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of \$10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of \$10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of \$10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of \$750,000;

(e) any underground in situ gasification of coal.

~~(11)~~(9) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

~~(12)~~(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

~~(13)~~(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 14. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption.

(4) This chapter does not apply to a facility defined in 75-20-104~~(10)~~(~~c~~)(8)(c) that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985."

Section 15. Section 75-20-205, MCA, is amended to read:

"75-20-205. Centerline location. (1) For all facilities defined in 75-20-104~~(10)~~(~~b~~)(8)(b) and ~~(10)~~(~~c~~)(8)(c) and associated facilities certified under this chapter, the board shall condition the certificate upon board approval of

1 a final centerline location.

2 (2) The final centerline location must be determined in
3 a noncontested case proceeding before the board after the
4 submission of a centerline location report by the
5 department. Within 60 days after the commencement of a
6 noncontested case proceeding, the board shall render and
7 record a decision approving a centerline location.

8 (3) The department shall consult with the certificate
9 holder and the affected landowners prior to making its
10 report.

11 (4) The department's report must be prepared
12 considering the criteria set forth in 75-20-301 and
13 75-20-503 and the findings of fact and conclusions of law
14 set out in the board decision.

15 (5) The department report may be completed on segments
16 of a certified facility as is convenient to the certificate
17 holder.

18 (6) The certificate holder shall initiate the final
19 centerline location approval process by submitting a
20 proposed centerline location plan to the department. The
21 certificate holder shall pay to the department the actual
22 costs incurred in processing a final centerline location not
23 to exceed 25% of the filing fee paid under 75-20-215."

24 **Section 16.** Section 75-20-208, MCA, is amended to read:

25 "75-20-208. Certain electric transmission lines --

1 verification of requirements. (1) Prior to constructing a
2 transmission line under 75-20-104(i)(b)(ii), the
3 person planning to construct the line must provide to the
4 department within 36 months of the date of the public notice
5 provided under 75-20-207, unless extended by the board for
6 good cause:

7 (a) copies of the right-of-way agreements or options
8 for a right-of-way containing sufficient information to
9 establish landowner consent to construct the line; and

10 (b) sufficient information for the department to verify
11 to the board that the requirements of
12 75-20-104(i)(b)(ii) are satisfied.

13 (2) The provisions of 75-20-104(i)(b)(ii) do
14 not apply to any facility for which public notice under
15 75-20-207 has been given but for which the requirements of
16 subsection (1) have not been complied with."

17 **Section 17.** Section 75-20-211, MCA, is amended to read:

18 "75-20-211. Application -- filing and contents -- proof
19 of service and notice. (1) (a) An applicant shall file with
20 the department and--department--of--health--a--joint an
21 application for a certificate under this chapter and for the
22 permits required under the laws administered by the
23 department of health and the board of health in such a form
24 as the board requires under applicable rules, containing the
25 following information:

(i) a description of the proposed location and of the facility to be built thereon on the location;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) for facilities defined in 75-20-104~~(10)(b)~~(8)(b) and ~~(10)(c)~~(8)(c), a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(v) (A) for facilities as defined in 75-20-104~~(10)(b)~~(8)(b) and ~~(10)(c)~~(8)(c), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104~~(10)(a)~~(8)(a), ~~(10)(d)~~(8)(d), and ~~(10)(e)~~(8)(e), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) such other information as the applicant considers relevant or as the board ~~and-board-of-health-by-order-or~~ rule or the department ~~and-department-of-health~~ by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) ~~above-shall~~ must be filed with the department, if ordered, and ~~shall~~ must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application ~~shall~~ must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

- (a) environmental quality council;
- (b) department of public service regulation;
- (c) department of fish, wildlife, and parks;
- (d) department of state lands;
- (e) department of commerce;
- (f) department of transportation;
- (g) department of public health.

(4) The copy of the application ~~shall~~ must be

1 accompanied by a notice specifying the date on or about
2 which the application is to be filed.

3 (5) An application ~~shall~~ must also be accompanied by
4 proof that public notice ~~thereof~~ of the application was
5 given to persons residing in the area in which any portion
6 of the proposed facility is proposed or is alternatively
7 proposed to be located, by publication of a summary of the
8 application in those newspapers that will substantially
9 inform those persons of the application."

10 **Section 18.** Section 75-20-213, MCA, is amended to read:

11 "75-20-213. Supplemental material -- amendments. (1) An
12 application for an amendment of an application or a
13 certificate ~~shall~~ must be in such a form and contain such
14 information as the board by rule or the department by order
15 prescribes. Notice of such an application ~~shall~~ must be
16 given as set forth in (3), (4), and (5) of 75-20-211.

17 (2) An application may be amended by an applicant any
18 time prior to the department's recommendation. If the
19 proposed amendment is such that it prevents the department,
20 ~~the department of health,~~ or the agencies listed in
21 75-20-216(5) from carrying out their duties and
22 responsibilities under this chapter, the department may
23 require such additional filing fees as the department
24 determines necessary, or the department may require a new
25 application and filing fee.

1 (3) The applicant shall submit supplemental material in
2 a timely manner as requested by the department or as offered
3 by the applicant to explain, support, or provide the detail
4 with respect to an item described in the original
5 application, without filing an application for an amendment.
6 The department's determination as to whether information is
7 supplemental or whether an application for amendment is
8 required ~~shall be~~ is conclusive."

9 **Section 19.** Section 75-20-215, MCA, is amended to read:

10 "75-20-215. Filing fee -- accountability -- refund --
11 use. (1) (a) A filing fee ~~shall~~ must be deposited in the
12 state special revenue fund for the use of the department in
13 administering this chapter. The applicant shall pay to the
14 department a filing fee as provided in this section based
15 upon the department's estimated costs of processing the
16 application under this chapter, but which ~~shall~~ may not
17 exceed the following scale based upon the estimated cost of
18 the facility:

19 (i) 4% of any estimated cost up to \$1 million; plus

20 (ii) 1% of any estimated cost over \$1 million and up to
21 \$20 million; plus

22 (iii) 0.5% of any estimated cost over \$20 million and up
23 to \$100 million; plus

24 (iv) 0.25% of any amount of estimated cost over \$100
25 million and up to \$300 million; plus

(v) 0.125% of any amount of estimated cost over \$300 million and up to \$1 billion; plus

(vi) 0.05% of any amount of estimated cost over \$1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required hereunder under this section or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract ~~shall~~ must be credited against the fee payable

hereunder under this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, ~~the department of health~~, the board, ~~the board of health~~, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) ~~above~~ upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee ~~shall~~ must be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of

6~~1~~ a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund ~~shall~~ must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues revenue derived from filing fees ~~shall~~ must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 20. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department ~~and department of health~~ shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department ~~and department of health~~ shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section,

the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503, and ~~the department of health shall commence~~ a study to enable it or the board ~~of health~~ to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department ~~and department of health~~ shall use, to the extent ~~they consider~~ it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department ~~of health~~ shall within 1 year following the date of acceptance of an application and the board ~~of health or department of health~~, if applicable, within an additional 6 months, issue any decision, opinion, order, certification, or permit required under the laws administered by the department ~~of health~~ or the board ~~of health~~ and this chapter. The department ~~of health~~ and the board ~~of health~~ shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department ~~of health~~

1 and board of-health administer, and any of the criteria
 2 specified in subsections (2) through (7) of 75-20-503 that
 3 are a part of the determinations made under the laws
 4 administered by the department of-health and the board of
 5 health. Although the decision, opinion, order,
 6 certification, or permit issued under this subsection is
 7 conclusive, the board retains authority to make the
 8 determination required under 75-20-301(2)(c). The decision,
 9 opinion, order, certification, or permit of the department
 10 of--health or the board of--health satisfies the review
 11 requirements by those agencies and ~~shall-be~~ is acceptable in
 12 lieu of an environmental impact statement under the Montana
 13 Environmental Policy Act. A copy of the decision, opinion,
 14 order, certification, or permit ~~shall~~ must be served upon
 15 the department and the board and ~~shall~~ must be utilized as
 16 part of their final site selection process. Prior to the
 17 issuance of a preliminary decision by the department of
 18 health and pursuant to rules adopted by the board of-health,
 19 the department of-health shall provide an opportunity for
 20 public review and comment.

21 (4) Within 22 months following acceptance of an
 22 application for a facility as defined in (a) and (d) of
 23 75-20-104~~(10)~~(8) and for a facility as defined in (b) and
 24 (c) of 75-20-104~~(10)~~(8) which is more than 30 miles in
 25 length, and within 1 year for a facility as defined in (b)

1 and (c) of 75-20-104~~(10)~~(8) which that is 30 miles or less
 2 in length, the department shall make a report to the board
 3 ~~which-shall~~ that must contain the department's studies,
 4 evaluations, recommendations, other pertinent documents
 5 resulting from its study and evaluation, and an
 6 environmental impact statement or analysis prepared pursuant
 7 to the Montana Environmental Policy Act, if any. If the
 8 application is for a combination of two or more facilities,
 9 the department shall make its report to the board within the
 10 greater of the lengths of time provided for in this
 11 subsection for either of the facilities.

12 (5) The departments of transportation; commerce; fish,
 13 wildlife, and parks; state lands; revenue; public health;
 14 and public service regulation shall report to the department
 15 information relating to the impact of the proposed site on
 16 each department's area of expertise. The report may include
 17 opinions as to the advisability of granting, denying, or
 18 modifying the certificate. The department shall allocate
 19 funds obtained from filing fees to the departments making
 20 reports to reimburse them for the costs of compiling
 21 information and issuing the required report."

22 **Section 21.** Section 75-20-218, MCA, is amended to read:

23 "75-20-218. Hearing date -- location -- department to
 24 act as staff -- hearings to be held jointly. (1) Upon
 25 receipt of the department's report submitted under

75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Certification hearings ~~shall~~ must be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof of the facility is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of--health shall hold any required permit hearings required under other laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing, the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of--health and the board of health."

Section 22. Section 75-20-219, MCA, is amended to read:

"75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active

parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems considers appropriate.

(2) In those cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the

1 proposed change would result in a material increase in any
2 environmental impact of the facility or a substantial change
3 in the location of all or a portion of the facility, the
4 applicant has the burden of showing by clear and convincing
5 evidence that the amendment should be granted.

6 (4) If the department determines that the proposed
7 change in the facility would not result in a material
8 increase in any environmental impact or would not be a
9 substantial change in the location of all or a portion of
10 the facility and a hearing is required because the
11 department's determination is appealed to the board as
12 provided in subsection (2), the appellant has the burden of
13 showing by clear and convincing evidence that the proposed
14 change in the facility would result in a material increase
15 in any environmental impact of the facility or a substantial
16 change in the location of all or a portion of the facility
17 as set forth in the certificate.

18 (5) If an amendment is required to a certificate which
19 would affect, amend, alter or modify a decision, opinion,
20 order, certification, or permit issued by the department of
21 health or board of--health, such the amendment must be
22 processed under the applicable statutes administered by the
23 department of--health or board of--health."

24 **Section 23.** Section 75-20-220, MCA, is amended to read:

25 "75-20-220. Hearing examiner -- restrictions -- duties.

1 (1) If the board appoints a hearing examiner to conduct any
2 certification proceedings under this chapter, the hearing
3 examiner may not be a member of the board, or an employee of
4 the department, ~~or a member or employee of the department of~~
5 ~~health or board of health.~~ A hearing examiner, if any, shall
6 be appointed by the board within 20 days after the
7 department's report has been filed with the board. ~~If--a~~
8 ~~hearing is held before the board of health or the department~~
9 ~~of--health,--the--board--and--the--board--of--health--or--the~~
10 ~~department of health shall mutually agree on the appointment~~
11 ~~of a hearing examiner to preside at both hearings.~~

12 (2) A prehearing conference ~~shall~~ must be held
13 following notice within 60 days after the department's
14 report has been filed with the board.

15 (3) The prehearing conference ~~shall~~ must be organized
16 and supervised by the hearing examiner.

17 (4) The prehearing conference ~~shall~~ must be directed
18 toward a determination of the issues presented by the
19 application, the department's report, and an identification
20 of the witnesses and documentary exhibits to be presented by
21 the active parties who intend to participate in the hearing.

22 (5) The hearing examiner shall require the active
23 parties to submit, in writing, and serve upon the other
24 active parties, all direct testimony which they propose and
25 any studies, investigations, reports, or other exhibits that

any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on ~~shall~~ must be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery which ~~shall~~ that must be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which

the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board ~~and in the case of a conjunctive hearing, within 90 days to the board and the board of health or department of health~~ proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

Section 24. Section 75-20-221, MCA, is amended to read:

"75-20-221. Parties to certification proceeding -- waiver -- statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding

1 involving the issuance of a decision, opinion, order,
2 certification, or permit by the ~~board-of--health~~ department
3 under this chapter may include as active parties:

4 (a) the applicant;

5 (b) each political entity, unit of local government,
6 and government agency, including the department ~~of--health~~,
7 entitled to receive service of a copy of the application
8 under 75-20-211(3);

9 (c) any person entitled to receive service of a copy of
10 the application under 75-20-211(5);

11 (d) any nonprofit organization formed in whole or in
12 part to promote conservation or natural beauty; to protect
13 the environment, personal health, or other biological
14 values; to preserve historical sites; to promote consumer
15 interests; to represent commercial and industrial groups; or
16 to promote the orderly development of the areas in which the
17 facility is to be located;

18 (e) any other interested person who establishes an
19 interest in the proceeding.

20 (2) The department shall be an active party in any
21 certification proceeding in which the department recommends
22 denial of all or a portion of a facility.

23 (3) The parties to a certification proceeding may also
24 include, as public parties, any Montana citizen and any
25 party referred to in (b), (c), (d), or (e) of subsection

1 (1).

2 (4) Any party waives the right to be a party if the
3 party does not participate in the hearing before the board
4 ~~or-the-board-of-health~~.

5 (5) Each unit of local government entitled to receive
6 service of a copy of the application under 75-20-211(3)
7 shall file with the board a statement showing whether the
8 unit of local government intends to participate in the
9 certification proceeding. If the unit of local government
10 does not intend to participate, it shall list in this
11 statement its reasons for failing to do so. This statement
12 of intent ~~shall~~ must be published before the proceeding
13 begins in a newspaper of general circulation within the
14 jurisdiction of the applicable unit of local government."

15 **Section 25.** Section 75-20-225, MCA, is amended to read:

16 "75-20-225. Certificate renewal -- application --
17 contents -- filing fee. (1) Any certificate holder for a
18 facility as defined in 75-20-104~~(10)~~~~(a)~~~~(1)~~~~(8)~~~~(a)~~~~(i)~~ may
19 apply for renewal of a certificate prior to the certificate
20 lapsing.

21 (2) An applicant for a renewal of a certificate shall
22 file with the department ~~and-department-of-health-a-joint~~ an
23 application in such a form as the board requires by rule.

24 (3) An application for renewal of a certificate must
25 include updated information on the matters listed in

75-20-211(1)(a) that have changed since the original application and such other information as the board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to \$300 million; plus

(b) 0.063% of any estimated cost over \$300 million."

Section 26. Section 75-20-226, MCA, is amended to read:

"75-20-226. Renewal study. (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in need, alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study

performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.

(2) The department ~~of health~~ and the board ~~of health~~, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). A copy of any decision, opinion, order, certification, or permit must be served on the department and the board and must be used as part of their decisionmaking process.

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall make a report to the board. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original board findings and conditions have been or need to be altered as a result of any significant changes in need, alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503.

(4) The departments of transportation; commerce; fish,

1 wildlife, and parks; state lands; revenue; public health;
 2 and public service regulation shall report to the department
 3 information relating to the impact of the proposed site on
 4 each department's area of responsibility. The report may
 5 include opinions as to the advisability of renewing the
 6 certificate. The department shall allocate funds obtained
 7 from filing fees to the departments making reports to
 8 reimburse them for the cost of compiling information and
 9 issuing the required reports."

10 **Section 27.** Section 75-20-301, MCA, is amended to read:

11 "75-20-301. Decision of board -- findings necessary for
 12 certification. (1) Within 60 days after submission of the
 13 recommended decision by the hearing examiner, the board
 14 shall make complete findings, issue an opinion, and render a
 15 decision upon the record, either granting or denying the
 16 application as filed or granting it upon such terms,
 17 conditions, or modifications of the construction, operation,
 18 or maintenance of the facility as the board considers
 19 appropriate.

20 (2) The board may not grant a certificate either as
 21 proposed by the applicant or as modified by the board unless
 22 it shall find and determine:

- 23 (a) the basis of the need for the facility;
- 24 (b) the nature of the probable environmental impact;
- 25 (c) that the facility minimizes adverse environmental

1 impact, considering the state of available technology and
 2 the nature and economics of the various alternatives;

3 (d) each of the criteria listed in 75-20-503;

4 (e) in the case of an electric, gas, or liquid
 5 transmission line or aqueduct:

6 (i) what part, if any, of the line or aqueduct ~~shall~~
 7 will be located underground;

8 (ii) that the facility is consistent with regional plans
 9 for expansion of the appropriate grid of the utility systems
 10 serving the state and interconnected utility systems; and

11 (iii) that the facility will serve the interests of
 12 utility system economy and reliability;

13 (f) that the location of the facility as proposed
 14 conforms to applicable state and local laws and regulations
 15 issued thereunder under the laws, except that the board may
 16 refuse to apply any local law or regulation if it finds
 17 that, as applied to the proposed facility, the law or
 18 regulation is unreasonably restrictive in view of the
 19 existing technology, of factors of cost or economics, or of
 20 the needs of consumers, whether located inside or outside of
 21 the directly affected government subdivisions;

22 (g) that the facility will serve the public interest,
 23 convenience, and necessity;

24 (h) that the department of-health or board of-health
 25 have has issued a decision, opinion, order, certification,

or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

Section 28. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. (1) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its

certificate upon such the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104~~(10)(a)(i)~~(8)(a)(i), the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources."

Section 29. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents.

(1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons ~~therefor~~ for the funding.

(3) Any certificate issued by the board ~~shall~~ must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement ~~shall~~ must include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The board shall issue as part of the certificate the following time limits:

(i) For a facility as defined in ~~(b)~~ (8)(b) or (8)(c) of 75-20-104~~(10)~~ that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in ~~(b)~~ (8)(b) of 75-20-104~~(10)~~ that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in ~~(a)~~ (8)(a) of 75-20-104~~(10)~~, construction must begin within 6 years and continue with due diligence in accordance with

preliminary construction plans established in the certificate.

(b) Unless extended or renewed in accordance with subsection (4)(c) or 75-20-225 through 75-20-227, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

~~(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.~~

Section 30. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate,

urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations

within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections ~~(10)(b)~~ (8)(b), (c), (d), or (e) of 75-20-104, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in subsection ~~(10)(a)~~ (8)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to

process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection ~~shall~~ must be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 31. Section 75-20-402, MCA, is amended to read:

"75-20-402. **Monitoring.** The board, ~~and the department,~~
~~the department of health, and the board of health~~ shall monitor the operations of all certificated facilities for assuring continuing compliance with this chapter and certificates issued hereunder under this chapter and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in subsection (3)(b) or (3)(c) of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such those purposes."

Section 32. Section 75-20-406, MCA, is amended to read:

"75-20-406. **Judicial review of board, ~~board of health,~~ and department of health decisions.** (1) Any active party as

defined in 75-20-221 aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure ~~shall be~~ is the same as that for contested cases under the Montana Administrative Procedure Act.

(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant to the other laws administered by the department, ~~of health and the board, of health~~ and this chapter, the decision may only be appealed only in conjunction with the final decision of the board as provided in subsections (1) and (2). If a permit or certification is denied by the department of health or the board of health, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the other laws administered by the department of health and the board of health; or

(b) reserve the right to appeal the denial by the department of health or the board of health until after the board has issued a final decision under 75-20-301.

(4) ~~Nothing in this~~ This section may not be construed to prohibit the board from holding a hearing ~~as herein~~

provided on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a)."

Section 33. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted -- contents -- available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) ~~of this section~~ is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of public health and---environmental---sciences, the department of transportation, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year

work plan required to be completed under federal rural electrification requirements in lieu of the long-range plan required in subsection (1).

(5) No A person may not file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department, except for electric transmission lines of a design capacity of 230 kilovolts or less."

Section 34. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) "Facility", as defined in 75-20-104~~(10)~~(8), is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy."

Section 35. Section 76-15-103, MCA, is amended to read:

"76-15-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Board" means the board of ~~natural--resources--and conservation land commissioners~~ provided for in ~~2-15-3302~~ Article X, section 4, of the Montana constitution.

(3) "Department" means the department of ~~natural resources-and-conservation~~ state lands provided for in Title 2, chapter 15, part 33 ~~32~~.

(4) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth in this chapter.

(5) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting

at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

(6) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(7) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity who holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

(8) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(9) "Qualified elector" means an elector as defined in Title 13.

(10) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

(11) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America."

Section 36. Section 80-8-110, MCA, is amended to read:

"80-8-110. Cooperation with other agencies. (1) The department of agriculture may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department of agriculture and the department of ~~health and environmental sciences~~ natural resources and environment shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage,

1 industrial wastewater ~~effluents~~ effluents, mining wastes
 2 regulated under the mining and reclamation laws administered
 3 by the department of state--lands natural resources and
 4 environment, slash and forest debris regulated under laws
 5 administered by the department of state lands, or marketable
 6 wood byproducts.

7 (4) For the purpose of this section, "hazardous waste"
 8 means any waste or combination of wastes of a solid, liquid,
 9 contained gaseous, or semisolid form which may cause or
 10 contribute to an increase in mortality or an increase in
 11 serious illness, taking into account the toxicity of the
 12 waste, its persistence and degradability in nature, its
 13 potential for assimilation or concentration in tissue, and
 14 other factors that may otherwise cause or contribute to
 15 adverse acute or chronic effects on the health of persons or
 16 other living organisms. Hazardous wastes include but are not
 17 limited to those which are toxic, radioactive, corrosive,
 18 flammable, irritants, strong sensitizers, or which generate
 19 pressure through decomposition, heat, or other means,
 20 excluding wood chips and wood used for manufacturing or fuel
 21 purposes."

22 **Section 37.** Section 81-23-103, MCA, is amended to read:

23 "81-23-103. General powers of the department. (1) The
 24 department shall supervise, regulate, and control the milk
 25 industry of this state, including the production,

1 processing, storage, distribution, and sale of milk sold for
 2 consumption in this state. ~~Nothing--in-this~~ This chapter
 3 ~~abrogates does not abrogate~~ or ~~affects~~ affect the status,
 4 force, or operation of any provision of public health laws
 5 or the law under which the department of livestock is
 6 constituted together with the department of livestock rules,
 7 county board of health rules, or municipal ordinances for
 8 the promotion or protection of the public health. The
 9 department may cooperate with the department of public
 10 ~~health and-environmental-sciences~~, the board of livestock,
 11 any county or city board of health, or the department of
 12 agriculture in enforcing this chapter.

13 (2) The department shall investigate all matters
 14 pertaining to the production, processing, storage,
 15 distribution, and sale of milk in this state and conduct
 16 hearings upon any subject pertinent to the administration of
 17 this chapter. The department may subpoena milk dealers,
 18 their records, books, and accounts, and any other person
 19 from whom information may be desired or considered necessary
 20 to carry out the purposes and intent of this chapter and may
 21 take depositions of witnesses who are sick or absent from
 22 the state or who cannot otherwise appear in person before
 23 the department at its offices. The department shall give at
 24 least 10 days' notice to the proposed witness."

25 **Section 38.** Section 82-4-103, MCA, is amended to read:

1 "82-4-103. Definitions. When used in this part, unless
2 a different meaning clearly appears from the context, the
3 following definitions apply:

4 (1) "Board" means the board of ~~land--commissioners~~
5 natural resources and environment as provided for in Article
6 ~~X7--section--47--of--the--constitution--of--this--state~~ Title 2,
7 chapter 15, part 33.

8 (2) "Department" means the department of ~~state--lands~~
9 natural resources and environment provided for in Title 2,
10 chapter 15, part 32 33.

11 (3) "Mineral" means mineral as defined in 82-4-203.

12 (4) "New mine" means a strip- or underground-mining
13 operation proposed for an area of land which the department
14 determines, because of distance from an existing strip-mine
15 or underground-mine operation or their respective facilities
16 or because of important differences in topography, soils,
17 wildlife, geologic structure, aquifers, or vegetation from
18 an existing strip-mine or underground-mine operation, does
19 not constitute an expansion of an existing operation.

20 (5) "Operation" means all of the premises, facilities,
21 railroad loops, roads, power lines, and equipment used in
22 the process of producing and removing mineral from a
23 designated strip-mine or underground-mine area.

24 (6) "Operator" means a person who intends to operate a
25 new strip mine or new underground mine involving the removal

1 of more than 10,000 cubic yards of mineral or overburden.

2 (7) "Person" means a person, partnership, corporation,
3 association, or other legal entity or any political
4 subdivision or agency of the state.

5 (8) "Preparatory work" means all onsite disturbances,
6 excluding prospecting, associated with the initiation of a
7 new strip mine or underground mine, including but not
8 limited to the construction of railroad spurs or loops,
9 buildings to house mining operations, roads, storage and
10 train load-out facilities, transmission lines, erection of
11 draglines and loading shovels, and other associated
12 facilities.

13 (9) "Strip mining" means any part of the process
14 followed in the production of mineral by the opencut method,
15 including mining by the auger method or any similar method
16 which penetrates a mineral deposit and removes mineral
17 directly through a series of openings made by a machine
18 which enters the deposit from a surface excavation or any
19 other method or process in which the strata or overburden is
20 removed or displaced in order to recover the mineral.

21 (10) "Underground mining" means any part of the process
22 followed in the production of a mineral such that vertical
23 or horizontal shafts, slopes, drifts, or incline planes
24 connected with excavations penetrating the mineral stratum
25 or strata are utilized."

Section 39. Section 82-4-111, MCA, is amended to read:

~~"82-4-111. Orders-and-rules~~ Rules of board ~~---hearings.~~

The board shall:

~~{1}--issue, after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;~~

~~{2}--issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;~~

~~{3} adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part;~~

~~{4}--conduct hearings under provisions of this part or rules adopted by the board."~~

Section 40. Section 82-4-112, MCA, is amended to read:

"82-4-112. Administration. The department shall:

(1) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) order the suspension of any permit for failure to

comply with this part, any rule adopted under this part, or permit issued pursuant to this part;

(3) order the halting of any operation that is started without first having secured a permit as required by this part;

(4) make investigations and inspections necessary to insure compliance with this part;

(5) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work;

(6) issue, after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(7) issue, after an opportunity for a hearing, a final order revoking a permit when the requirements set forth by the notice of noncompliance, order of suspension, or order of the board requiring remedial measures have not been complied with according to the terms contained in this part;

(8) conduct hearings under the provisions of this part or rules adopted by the board;

~~{6}{9}~~ adopt rules with respect to the filing of reports, the issuance of permits, and other matters of

procedure and administration."

Section 41. Section 82-4-123, MCA, is amended to read:

"82-4-123. Permit fee and surety bond. A fee of \$50 ~~shall~~ must be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board ~~on---the recommendation--of-the-commissioner~~ of not less than \$200 or more than \$10,000 for each acre or fraction thereof ~~of an acre~~ of the area of land to be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. In determining the amount of the bond ~~within-the-above-limits~~, the board shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the ~~above limits in this section~~, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 42. Section 82-4-129, MCA, is amended to read:

"82-4-129. Noncompliance -- suspension of permits. (1)

If any of the requirements of this part or rules or orders of the department ~~and-the-board~~ have not been complied with within the time limits set by the department ~~or-the-board~~ or by this part, the department shall serve a notice of noncompliance on the operator or, where found necessary, the ~~commissioner~~ department shall order the suspension of a permit. The notice or order ~~shall~~ must be handed to the operator in person or served by certified ~~or-registered~~ mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension ~~shall~~ must specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set ~~therein in the notice or order~~, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked ~~shall~~ must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until ~~he~~ the operator has complied with all the requirements

of this part in respect to former permits issued him to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

Section 43. 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 a mineral is not 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 the 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~~ natural resources and environment provided for in ~~Article-X,~~ section--4,--of--the--constitution--of--this--state Title 2, chapter 15, part 33.

(7) "Coal conservation plan" means the planned course

of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

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

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

~~{10}--"Commissioner"--means--the--commissioner--of--state lands--provided--for--in--2-15-3202.~~

~~{11}~~(10) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly

being cast down the slope below the mineral seam and the operating bench.

~~{12}~~(11) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

~~{13}~~(12) "Department" means the department of ~~state lands natural resources and environment~~ provided for in Title 2, chapter 15, part 32 ~~33~~.

(13) "Director" means the director of the department.

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

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

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

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

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

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

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

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

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

1 for the purpose of determining the location, quality, or
2 quantity of a natural mineral deposit.

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

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

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

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

25 (26) "Prospecting" means the removal of overburden, core

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

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

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

22 (29) "Strip mining" means any part of the process
 23 followed in the production of mineral by the opencut method,
 24 including mining by the auger method or any similar method
 25 which that penetrates a mineral deposit and removes mineral

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

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

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

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

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

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

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

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

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

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

4 **Section 44.** Section 82-4-204, MCA, is amended to read:

5 "82-4-204. Board orders, rules, and hearings. The board
6 shall:

7 ~~{1}--issue--orders--requiring--an--operator--to--adopt--the~~
8 ~~remedial--measures--necessary--to--comply--with--this--part--and~~
9 ~~rules--adopted--under--this--part;~~

10 ~~{2}--issue--after--an--opportunity--for--a--hearing--a--final~~
11 ~~order--directing--the--department--to--revoke--a--permit--when--the~~
12 ~~requirements--set--forth--by--the--notice--of--noncompliance--order~~
13 ~~of--suspension--or--an--order--of--the--board--requiring--remedial~~
14 ~~measures--have--not--been--complied--with--according--to--the--terms~~
15 ~~herein;~~

16 ~~{3} adopt, after an opportunity for a hearing, general~~
17 ~~rules pertaining to strip mining and to underground mining~~
18 ~~to accomplish the purposes of this part;~~

19 ~~{4}--conduct--hearings--under--provisions--of--this--part--or~~
20 ~~rules--adopted--by--the--board."~~

21 **Section 45.** Section 82-4-205, MCA, is amended to read:

22 "82-4-205. Administration by department of state--lands
23 natural resources and environment. The department:

24 (1) shall exercise general supervision, administration,
25 and enforcement of this part and all rules and orders

1 adopted under this part;

2 (2) shall examine and pass upon all plans and
3 specifications submitted by the operator for the method of
4 operation, subsidence stabilization, water control,
5 backfilling, grading, highwall reduction, topsoiling, and
6 for the reclamation of the area of land affected by his the
7 operation;

8 (3) shall order the suspension of any permit for
9 failure to comply with this part or any rule adopted under
10 this part;

11 (4) shall order the halting of any operation that is
12 started without first having secured a permit as required by
13 this part or order the cessation of operations not in
14 compliance with this part in accordance with 82-4-251;

15 (5) shall make investigations and inspections necessary
16 to insure compliance with this part;

17 (6) may encourage and conduct investigations, research,
18 experiments, and demonstrations and collect and disseminate
19 information relating to strip mining and to underground
20 mining and reclamation of lands and waters affected by strip
21 mining and underground mining;

22 (7) may adopt rules with respect to the filing of
23 reports, the issuance of permits, monitoring, and other
24 matters of procedure and administration;

25 (8) shall issue orders requiring an operator to adopt

1 the remedial measures necessary to comply with this part and
2 rules adopted under this part;

3 (9) shall issue, after an opportunity for a hearing, a
4 final order revoking a permit when the requirements set
5 forth by the notice of noncompliance, order of suspension,
6 or order of the board requiring remedial measures have not
7 been complied with according to the terms contained in this
8 part;

9 ~~(8)~~ (10) may shall conduct hearings under the provisions
10 of this part or rules adopted by the board."

11 **Section 46.** Section 82-4-223, MCA, is amended to read:

12 "82-4-223. Permit fee and surety bond. (1) An
13 application fee of \$100 shall be paid before the permit
14 required in this part shall be issued.

15 (2) Before a permit may be issued, the operator shall
16 file with the department a bond payable to the state of
17 Montana with surety satisfactory to the department in the
18 penal sum to be determined by the board, ~~on the~~
19 ~~recommendation of the commissioner,~~ of not less than \$200
20 for each acre or fraction thereof of an acre of the area of
21 land affected, with a minimum bond of \$10,000, conditioned
22 upon the faithful performance of the requirements set forth
23 in this part and of the rules of the board. The operator may
24 elect to deposit cash, negotiable bonds, or negotiable
25 certificates of deposit of any bank organized or transacting

business in the United States. The cash deposit or market value of such the securities ~~shall~~ must be equal to or greater than the amount of the bond required for the bonded area. The level of bonding ~~shall~~ must be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board shall adjust the amount of bond required if the cost of reclamation changes.

(3) In determining the amount of the bond, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but ~~in no event~~ shall the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 47. Section 82-4-227, MCA, is amended to read:

"82-4-227. Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision ~~shall~~ may not be approved by the department unless, on the basis of the information set forth in the application, an onsite inspection, and an evaluation of the operation by the department, the applicant has affirmatively

demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that ~~his~~ the application is in compliance with this part and the rules adopted under it.

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

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

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

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

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. (In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.)

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

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

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

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and those

lands as to which the regulatory-authority department finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

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

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

(5) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the

1 surrounding area under equivalent levels of management and
2 can meet the soil reconstruction standards of 82-4-232(3).
3 Nothing in this subsection applies to any permit issued
4 prior to August 3, 1977, or to any revisions or renewals
5 thereof, or to any existing strip- or underground-mining
6 operations for which a permit was issued prior to August 3,
7 1977.

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

19 (7) If the department finds that the operation will
20 constitute a hazard to a dwelling house, public building,
21 school, church, cemetery, commercial or institutional
22 building, public road, stream, lake, or other public
23 property, the department shall delete those areas from the
24 prospecting, strip-mining, or underground-mining permit
25 application before it can be approved. In no case may

1 strip- or underground-coal-mining be allowed within 300 feet
2 of any occupied dwelling, unless waived by the owner, nor
3 within 300 feet of any public building, school, church,
4 community, or institutional building, or public park; nor
5 within 100 feet of a cemetery; nor within 100 feet of the
6 outside right-of-way line of any public road, except where
7 mine access roads or haulage roads join such right-of-way
8 line. The department may permit such the roads to be
9 relocated or the area affected to lie within 100 feet of the
10 road if, after public notice and opportunity for public
11 hearing in the locality, a written finding is made that the
12 interests of the public and the landowners affected will be
13 protected.

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

20 (a) the nature, timing, and sequencing of specific
21 strip-mine activities and specific underground-mine
22 activities are jointly approved by the department and the
23 regulatory authority concerned with the health and safety of
24 underground miners; and

25 (b) such the operations will result in improved

1 resource recovery, abatement of water pollution, or
2 elimination of hazards to the health and safety of the
3 public.

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

16 (10) No A permit or major permit revision for a
17 strip- or underground-coal-mining operation may not be
18 issued unless the applicant has affirmatively demonstrated
19 by its coal conservation plan that no a failure to conserve
20 coal will not occur. The department may require the
21 applicant to submit any information it considers necessary
22 for review of the coal conservation plan.

23 (11) Whenever information available to the department
24 indicates that any strip- or underground-coal-mining
25 operation owned or controlled by the applicant is currently

1 in violation of Public Law 95-87, as amended, or any state
2 law required by Public Law 95-87, as amended, or any law,
3 rule, or regulation of the United States or of any
4 department or agency in the United States pertaining to air
5 or water environmental protection, the department ~~shall~~ may
6 not issue a strip- or underground-coal-mining permit or
7 major revision until the applicant submits proof that the
8 violation has been corrected or is in the process of being
9 corrected to the satisfaction of the administering agency.

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

20 (13) Subject to valid existing rights, no strip- or
21 underground-coal-mining operations except those which
22 existed as of August 3, 1977, may not be conducted on
23 private lands within the boundaries of units of the national
24 park system, the national wildlife refuge systems, the
25 national wilderness preservation system, the wild and scenic

1 rivers system, including study rivers designated under
2 section 5(a) of the Wild and Scenic Rivers Act, or national
3 recreation areas designated by act of congress."

4 **Section 48.** Section 82-4-321, MCA, is amended to read:

5 "82-4-321. Administration Board rulemaking. ~~The board~~
6 ~~is charged with the responsibility of administering this~~
7 ~~part. In order to~~ To implement its the terms and provisions
8 of this part, the board shall from time to time promulgate
9 such rules as the board shall ~~deem~~ considers necessary. The
10 ~~board may delegate such powers, duties, and functions to the~~
11 ~~department as it deems necessary for the performance of its~~
12 ~~duties as administrator of this part. The board shall employ~~
13 ~~experienced, qualified persons in the field of mined land~~
14 ~~reclamation who, for the purpose of this part, are referred~~
15 ~~to as supervisors."~~

16 **Section 49.** Section 82-4-337, MCA, is amended to read:

17 "82-4-337. Inspection -- issuance of operating permit
18 -- modification. (1) (a) The board shall cause all
19 applications for operating permits to be reviewed for
20 completeness within 30 days of receipt. The board shall
21 notify the applicant concerning completeness as soon as
22 possible. An application is considered complete unless the
23 applicant is notified of any deficiencies within 30 days of
24 receipt.

25 (b) Unless the review period is extended as provided in

1 this section, the board shall review the adequacy of the
2 proposed reclamation plan and plan of operation within 30
3 days of the determination that the application is complete
4 or within 60 days of receipt of the application if the board
5 does not notify the applicant of any deficiencies in the
6 application. If the applicant is not notified of
7 deficiencies or inadequacies in the proposed reclamation
8 plan and plan of operation within such the time period, the
9 operating permit ~~shall~~ must be issued upon receipt of the
10 bond as required in 82-4-338 and pursuant to the
11 requirements of subsection (1)(c). The department shall
12 promptly notify the applicant of the form and amount of bond
13 which that will be required.

14 (c) No A permit may not be issued until:

15 (i) sufficient bond has been submitted pursuant to
16 82-4-338;

17 (ii) the information and certification have been
18 submitted pursuant to 82-4-335(9); and

19 (iii) the department has found that permit issuance is
20 not prohibited by 82-4-335(8) or 82-4-341(6).

21 (d) (i) Prior to issuance of a permit, the department
22 shall inspect the site unless the department has failed to
23 act on the application within the time prescribed in
24 subsection (1)(b). If the site is not accessible due to
25 extended adverse weather conditions, the department may

1 extend the time period prescribed in subsection (1)(b) by
2 not more than 180 days to allow inspection of the site and
3 reasonable review. The department must serve written notice
4 of extension upon the applicant in person or by certified
5 mail, and any such extension is subject to appeal to the
6 board in accordance with the Montana Administrative
7 Procedure Act.

8 (ii) If the department determines that additional time
9 is needed to review the application and reclamation plan for
10 a major operation, the department and the applicant shall
11 negotiate to extend the period prescribed in subsection
12 (1)(b) by not more than 365 days in order to permit
13 reasonable review.

14 (iii) Failure of the board to act upon a complete
15 application within the extension period constitutes approval
16 of the application, and the permit ~~shall~~ must be issued
17 promptly upon receipt of the bond as required in 82-4-338.

18 (2) The operating permit ~~shall~~ must be granted for the
19 period required to complete the operation and ~~shall-be~~ is
20 valid until the operation authorized by the permit is
21 completed or abandoned unless the permit is suspended or
22 revoked by the board as provided in this part.

23 (3) The operating permit ~~shall~~ must provide that the
24 reclamation plan may be modified by the board department,
25 upon its own motion or upon proper application of the

1 permittee ~~or-department~~, after timely notice and opportunity
2 for hearing, at any time during the term of the permit and
3 for any of the following reasons:

4 (a) to modify the requirements so they will not
5 conflict with existing laws;

6 (b) when the previously adopted reclamation plan is
7 impossible or impracticable to implement and maintain;

8 (c) when significant environmental problem situations
9 are revealed by field inspection."

10 **Section 50.** Section 82-4-362, MCA, is amended to read:

11 **"82-4-362. Suspension of permits -- hearing.** (1) If any
12 of the requirements of this part, the rules adopted under
13 this part, or a license, permit, or reclamation plan has not
14 been complied with within the time limits set by the
15 department or board or by this part, the department shall
16 serve a notice of noncompliance on the licensee or permittee
17 or, if necessary, the commissioner shall order the
18 suspension of the permit. The commissioner may order
19 immediate suspension of a permit whenever he the
20 commissioner makes a finding that a violation of this part,
21 the rules adopted under this part, or a license or permit,
22 including the reclamation plan, is creating an imminent
23 danger to the health or safety of persons outside the permit
24 area. The notice or order must be handed to the licensee or
25 permittee in person or served by certified ~~or-registered~~

mail addressed to the permanent address shown on the application for a license or permit. The notice of noncompliance must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, or the reclamation plan.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein in the notice or order, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner

shall suspend the permit. The commissioner shall reinstate the permit upon compliance."

Section 51. Section 82-4-421, MCA, is amended to read:

"82-4-421. Administration ---delegation--of--functions. The board is and the department are the administrators of this part, and it has they have all the power necessary to implement and enforce it. The board may delegate to the commissioner of state lands such powers, duties, and functions under this part as it considers necessary for the performance of its duties."

Section 52. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions of board Board to prepare and adopt rules. The board has the following powers, duties, and functions to shall

{1} enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the board that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part;

{2} prepare and adopt rules pertaining to opencut mining to accomplish the purposes of this part;

{3} conduct hearings and, for the purposes of conducting such hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear

evidence,--and--require-the-production-of-any-books,-papers,
correspondence,-memoranda,-agreements,-documents,-or--other
records-relevant-or-material-to-the-inquiry;

(4)--adopt---uniform---procedures---for--the--filing--of
necessary-records,-the-issuance-of-contracts,-and--for--any
other--matters-of-administration-not-specifically-enumerated
in-this-part;

(5)--reclaim-any-affected-land-with-respect-to--which--a
bond-has-been-forfeited;-and

(6)--make---investigations---or--inspections--which--are
considered-necessary-to-insure-compliance-with-any-provision
of-this-part."

Section 53. Section 82-4-425, MCA, is amended to read:

"82-4-425. Inspection of opencut mining by board. The
board or-its-accredited-representatives may enter upon lands
subjected to opencut mining at all reasonable times for the
purpose of inspection to determine whether the provisions of
this part have been complied with."

Section 54. Section 82-4-427, MCA, is amended to read:

"82-4-427. Board Department hearing. (1) A person who
is aggrieved by a final decision of the commissioner-of
state-lands department on an application for a contract or a
contract amendment is entitled to a hearing before-the-board
on that decision.

(2) The Montana Administrative Procedure Act governs

hearings before the board department and judicial review of
decisions of the board department under this part."

NEW SECTION. Section 55. Duties of department. The
department shall:

(1) enter into contracts when it is found on the basis
of the information set forth in the application and an
evaluation of the operation by the board that the
requirements of this part or rules adopted under this part
will be observed and that the operation and the reclamation
of the affected area can be carried out consistently with
the purpose of this part;

(2) conduct hearings and, for the purposes of
conducting the hearings, administer oaths and affirmations,
subpoena witnesses, compel attendance of witnesses, hear
evidence, and require the production of any books, papers,
correspondence, memoranda, agreements, documents, or other
records relevant or material to the inquiry;

(3) adopt uniform procedures for the filing of
necessary records, the issuance of contracts, and any other
matters of administration not specifically enumerated in
this part;

(4) reclaim affected land with respect to which a bond
has been forfeited; and

(5) conduct investigations or inspections that are
considered necessary to ensure compliance with a provision

1 of this part.

2 **Section 56.** Section 85-1-102, MCA, is amended to read:

3 "85-1-102. Definitions. Unless the context requires
4 otherwise, in this chapter, the following definitions apply:

5 (1) "Administrative costs" means costs incurred by the
6 department:

7 (a) for the purpose of protecting the department's
8 properties and assets;

9 (b) to oversee the operation and maintenance of the
10 projects;

11 (c) to administer contracts and receivables;

12 (d) to maintain project financial records;

13 (e) to provide technical assistance for operating,
14 maintaining, and rehabilitating the projects; and

15 (f) to assist in securing funds for operating,
16 maintaining, and rehabilitating the projects.

17 (2) "Board" means the board of ~~natural-resources-and~~
18 ~~conservation land commissioners~~ provided for in 2-15-3302
19 Article X, section 4, of the Montana constitution.

20 (3) "Cost of operation and maintenance" means the costs
21 of operation, maintenance, and routine repairs and the costs
22 incurred by the water users' association or the department
23 in the distribution of water from the project, excluding the
24 department's administrative costs.

25 (4) "Cost of works" means the cost of construction,

1 including any rehabilitation or alteration of the project;
2 the cost of all lands, property, rights, easements, and
3 franchises acquired which that are deemed considered
4 necessary for the construction; the cost of all water rights
5 acquired or exercised by the department in connection with
6 those works; the cost of all machinery and equipment,
7 financing charges, interest prior to and during construction
8 and for a period not exceeding 3 years after the completion
9 of construction; cost of engineering and legal expenses,
10 plans, specifications, surveys, estimates of cost, and other
11 expenses necessary or incident to determining the
12 feasibility or practicability of any project; administrative
13 expense; and other expenses as may be necessary or incident
14 to the financing authorized in this part and the
15 construction of the works and the placing of the works in
16 operation.

17 (5) "Department" means the department of ~~natural~~
18 ~~resources-and-conservation~~ state lands provided for in Title
19 2, chapter 15, part 33 32.

20 (6) "Owner" means all individuals, irrigation
21 districts, drainage districts, flood control districts,
22 incorporated companies, societies, or associations having
23 any title or interest in any properties, rights, easements,
24 or franchises to be acquired.

25 (7) "Private person" means any individual, association,

partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605 but does not include a governmental entity such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof of the United States, or any other governmental entity.

(8) "Project" means any one of the works defined in this section or any combination of works which are physically connected or jointly managed and operated as a single unit.

(9) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(10) "Water development account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to finance loans under the provisions of the water development program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients and to

purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

(11) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(12) "Water development debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury to be used as provided in 85-1-619.

(13) "Water development project" means a project as defined in subsection (8), except that water development projects are not limited to projects owned or operated by the department.

(14) "Water development state special revenue account"

1 means a separate account created by 85-1-604 within the
2 state special revenue fund of the state treasury for the
3 purposes of the water development program as set forth in
4 85-1-604.

5 (15) "Works" means all property and rights, easements,
6 and franchises relating to property and considered necessary
7 or convenient for the operation of the works and all water
8 rights acquired or exercised by the department in connection
9 with those works and includes all means of conserving and
10 distributing water, including, without limiting the
11 generality of the foregoing, reservoirs, dams, diversion
12 canals, distributing canals, waste canals, drainage canals,
13 dikes, lateral ditches and pumping units, mains, pipelines,
14 and waterworks systems and includes all works for the
15 conservation, development, storage, distribution, and
16 utilization of water, including without limiting the
17 generality of the foregoing, works for the purpose of
18 irrigation, flood prevention, drainage, fish and wildlife,
19 recreation, development of power, watering of stock,
20 supplying of water for public, domestic, industrial, or
21 other uses and for fire protection."

22 **Section 57.** Section 85-1-203, MCA, is amended to read:

23 "85-1-203. State water plan. (1) The department of
24 natural resources and environment shall gather from any
25 source reliable information relating to Montana's water

1 resources and prepare from the information a continuing
2 comprehensive inventory of the water resources of the state.
3 In preparing this inventory, the department may conduct
4 studies; adopt studies made by other competent water
5 resource groups, including federal, regional, state, or
6 private agencies; perform research or employ other competent
7 agencies to perform research on a contract basis; and hold
8 public hearings in affected areas at which all interested
9 parties must be given an opportunity to appear.

10 (2) The department of natural resources and environment
11 shall formulate and, with the approval of the board of
12 natural resources and environment, adopt and amend, extend,
13 or add to a comprehensive, coordinated multiple-use water
14 resources plan known as the "state water plan". The state
15 water plan may be formulated and adopted in sections, these
16 sections corresponding with hydrologic divisions of the
17 state. The state water plan must set out a progressive
18 program for the conservation, development, and utilization
19 of the state's water resources and propose the most
20 effective means by which these water resources may be
21 applied for the benefit of the people, with due
22 consideration of alternative uses and combinations of uses.
23 Before adopting the state water plan or any section of the
24 plan, the department shall hold public hearings in the state
25 or in an area of the state encompassed by a section of the

plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(3) The department of natural resources and environment shall submit to the water policy committee established in 85-2-105 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(4) The legislature, by joint resolution, may revise the state water plan.

(5) The department of natural resources and environment shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(6) The department of natural resources and environment shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(7) In developing and revising the state water plan as

provided in this section, the department of natural resources and environment shall consult with the water policy committee established in 85-2-105 and solicit the advice of the committee in carrying out its duties under this section."

Section 58. Section 85-1-205, MCA, is amended to read:

"85-1-205. Acquisition of water in federal reservoirs. The department of natural resources and environment may acquire water or water storage by purchase option or agreement with the federal government from any federal reservoir for the purpose of sale, rent, or distribution for any beneficial use. In such those cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such the water at such rates and under such terms and conditions as it considers appropriate."

Section 59. Section 85-1-223, MCA, is amended to read:

"85-1-223. Negotiations with other states by the department. The department of natural resources and environment may negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution, and allocation of the water of any stream or streams flowing from Montana into such other states or flowing from such other states

into Montana. It shall cooperate with other states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of the compacts. This authority and the duties hereby imposed by this section are limited to the preparation and proposal of the compact and the compact or agreement is not binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in the compact."

Section 60. Section 85-2-512, MCA, is amended to read:

"85-2-512. Investigations. (1) The department shall compile information for the purpose of enabling it to comply with this part. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, ~~the department of health and environmental sciences~~, and any other private, state, or governmental agency.

(2) In addition to ~~the foregoing~~ subsection (1), the department may request specific investigations by the preceding public agencies where desired information is not otherwise available."

Section 61. Section 85-2-514, MCA, is amended to read:

"85-2-514. Inspection of wells. The department, or the

state bureau of mines and geology, ~~or the department of health and environmental sciences~~ may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part."

Section 62. Section 85-9-104, MCA, is amended to read:

"85-9-104. Limitations. (1) ~~Nothing in this~~ This chapter ~~shall~~ may not be construed to grant to the district the power to generate, distribute, or sell electric energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, ~~department of health and environmental sciences~~, or the department of fish, wildlife, and parks but are supplementary thereto to and in aid thereof of those provisions."

Section 63. Section 85-9-202, MCA, is amended to read:

"85-9-202. Action by department of natural resources upon receipt of request. (1) Sooner than 11 days after the request is received, the department shall acknowledge the request.

(2) The department shall itself, through cooperating agencies, or together with cooperating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability, and compatibility with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability, or consistency with the state water plan;

(g) sooner than 1 year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, department of fish, wildlife, and parks, ~~department-of-health-and-environmental-sciences~~, and other affected state and federal resource agencies for their comments."

Section 64. Section 85-9-204, MCA, is amended to read:

"85-9-204. **Feasibility study and report** -- adjustment of proposed boundaries. After the hearing, the applicants or any one of them may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report and sooner than 1 year

after receipt of the request send copies to the applicants, if any, the department of fish, wildlife, and parks, ~~department--of--health-and-environmental-sciences~~, and other affected state and federal water resource agencies. For good cause shown, based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report ~~shall~~ must describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability, and consistency with the state water plan and to exclude land ~~which that~~ that would ~~not~~ receive no direct or indirect benefits from the proposed district."

Section 65. Section 90-15-102, MCA, is amended to read:

"90-15-102. **Definitions.** As used in this chapter, the following definitions apply:

(1) "Committee" means the natural resource data system advisory committee created by 2-15-1514.

(2) "Library" means the state library provided for in 22-1-201.

(3) "Natural heritage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types

1 of Montana.

2 (4) "Principal data source agencies" means any of the
3 following state agencies: the department of natural
4 resources and conservation environment; the department of
5 fish, wildlife, and parks; the department of state lands;
6 ~~the--department--of--health--and--environmental--sciences~~; the
7 department of agriculture; the department of transportation;
8 the state historical society; and the Montana university
9 system."

10 NEW SECTION. Section 66. Legal interest in facilities
11 transferred. (1) The legal interest of the department of
12 fish, wildlife, and parks in those facilities and structures
13 listed in subsection (2) is transferred to the department of
14 state lands and must be managed for fish and wildlife
15 purposes in consultation with the department of fish,
16 wildlife, and parks. The present uses of the facilities and
17 structures listed in subsection (2) must continue.

18 (2) Facilities and structures transferred pursuant to
19 subsection (1) are as follows:

- 20 (a) South Sandstone reservoir, Fallon County;
- 21 (b) Bearpaw Lake, Hill County;
- 22 (c) Clearwater fish barrier, Missoula County;
- 23 (d) Whitetail reservoir, Daniels County;
- 24 (e) Gartside reservoir, Richland County; and
- 25 (f) Rainy Lake fish barrier, Missoula County.

1 NEW SECTION. Section 67. Codification instruction.

2 [Section 55] is intended to be codified as an integral part
3 of Title 82, chapter 4, part 4, and the provisions of Title
4 82, chapter 4, part 4, apply to [section 55].

5 NEW SECTION. Section 68. Saving clause. [This act]

6 does not affect rights and duties that matured, penalties
7 that were incurred, or proceedings that were begun before
8 [the effective date of this act].

9 NEW SECTION. Section 69. Severability. If a part of

10 [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this
12 act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. Section 70. Implementation according to

16 executive order. The implementation of [sections 1 through
17 66] must begin July 1, 1993, and be concluded January 1,
18 1994, according to a schedule in an executive order signed
19 by the governor. The governor may execute and implement an
20 executive order necessary to carry out the purposes of this
21 section.

22 NEW SECTION. Section 71. Effective dates. (1)

23 [Sections 67 through 70 and this section] are effective on
24 passage and approval.

25 (2) [Sections 1 through 66] are effective according to

LC 0501/01

1 the schedule provided in [section 70].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0264, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act reorganizing the natural resource and environmental functions of the board, director, and Department of Health and Environmental Sciences; the board, director, and Department of Natural Resources and Conservation; and the Board of State Land Commissioners and the commissioner and Department of State Lands; renaming the board, director, and Department of Health and Environmental Sciences and the board, director, and Department of Natural Resources and Conservation; providing for the powers, duties, and functions of these agencies.

ASSUMPTIONS:

1. Between July 1, 1993 and January 1, 1994, the Reclamation Division in the Department of State Lands (DSL), and the Conservation and Resource Development Division and the Engineering Bureau in the Department of Natural Resources and Conservation (DNRC) will switch physical locations.
2. The majority of the Department of Health and Environmental Sciences (DHES) environmental program positions will not physically move.
3. The reorganization of the Reclamation Division, DSL, the Conservation and Resource Development Division (CARDD) and the Engineering Bureau of the DNRC, will have one-time costs of \$291,000 in FY94 and increased operating costs of \$193,600 each year of the 1995 biennium.

One-time costs include:

- a. \$88,700 for DSL to replace the Reclamation Division computer equipment.
- b. \$153,000 for CARDD and the Engineering Bureau to move, purchase new computer equipment, and publish administrative rules to reflect reorganization.
- c. \$34,300 for the Reclamation Division to move and publish administrative rules to reflect reorganization.
- d. \$15,000 to move a portion of the DHES environment program staff to the DNRC building.

Annual operating cost increases:

- a. \$195,000 for additional technical support, operating expenses, and equipment for CARDD and the Engineering Bureau no longer shared with the DNRC.
- b. \$8,000 for an accounting position in DSL to be upgraded for new bonding, and grant and loan monitoring responsibilities.
- c. \$33,600 for a new engineering position in DSL to manage for fish and wildlife purposes in consultation with Department of Fish, Wildlife and Parks, the six sites mentioned in section 66 of the bill.
- d. \$78,000 increase in rent for DSL.
- e. (\$127,500) annual reduction for the DSL in rent and federal indirect charges associated with the Reclamation Division.
- f. \$6,500 in centralized computer costs for the new Department of Natural Resources and Environment (DNRE).

(continued on the next page)

David Lewis

1-27-93

DAVID LEWIS, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

JOHN COBB, PRIMARY SPONSOR

DATE

Fiscal Note for HB0264, as introduced

HB 264

4. All related support staff from each agency will be transferred to the corresponding agency.
5. DNRE will charge the federal agencies to collect indirect costs which DHES under or over collected in the 1993 biennium and in FY94. If DHES over collects, then the Office of Budget and Program Planning (OBPP) through an executive order by the Governor will transfer the over collection to DNRE. If DHES under collects, then OBPP will transfer the necessary funds from DNRE.
6. OBPP has the legal authority to use executive orders to transfer appropriation authority between impacted departments to accomplish the reorganization.
7. The general fund will provide funding for more support staff in DHES due to the reduced state special and federal special revenue base for assessing the indirect costs.

FISCAL IMPACT:

One time expenses of approximately \$291,000 and additional annual operating costs of approximately \$193,600. A detailed analysis of the proposed reorganization is needed to provide reliable cost estimates and a smooth transfer of functions and staff.

TECHNICAL NOTES:

A six month implementation period - July 1, 1993 to January 1, 1994 - will create fiscal management, federal accountability and reporting, and budgeting problems, as well as staff unrest. For a smooth, well-organized transition to the new structure there is need for an analysis of the proposed reorganization; determination of the impacted positions, costs, funding, and federal reporting requirements; solutions to the physical relocation of agencies and transferring of fiscal responsibilities; involvement of impacted state employees; and implementation on the first day of a even-numbered fiscal year.