

House BILL NO. 162

INTRODUCED BY Jayla

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE DEFINITION OF PROSPECTING; EXTENDING THE APPLICATION PERIOD FOR RENEWAL OF A MINING PERMIT; ADDING CRITERIA FOR REFUSAL OF A PROSPECTING PERMIT; AND AMENDING SECTIONS 82-4-203, 82-4-221, 82-4-226, AND 82-4-227, MCA."

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

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

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

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

(2) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities;

(b) ~~but the~~ The term does not include upland areas ~~which~~ that 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~~ that 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~~. The term 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~~ mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or

1 subsurface disturbance associated with strip mining or underground mining; and all activities necessary  
2 and incident to the reclamation of ~~such~~ those operations.

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

4 (6) "Board" means the board of land commissioners provided for in Article X, section 4, of the  
5 constitution of this state.

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

9 (8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,  
10 concentrating, or other processing or preparation.

11 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid  
12 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing  
13 for other than commercial purposes.

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

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

19 (11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough  
20 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance  
21 is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with  
22 the excavated overburden commonly being cast down the slope below the mineral seam and the operating  
23 bench.

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

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

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

30 (15) "Fill bench" means that portion of a bench or table ~~which~~ that is formed by depositing

1 overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

2 (16) "Imminent danger to the health and safety of the public" means the existence of any condition  
3 or practice or any violation of a permit or other requirement of this part in a strip- or  
4 underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial  
5 physical harm to persons outside the permit area before the condition, practice, or violation can be abated.  
6 A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected  
7 to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger  
8 during the time necessary for abatement.

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

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

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

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

18 (21) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in  
19 the process of producing and removing mineral from and reclaiming a designated strip-mine or  
20 underground-mine area, including coal preparation plants, and all activities, including excavation incident  
21 to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural  
22 mineral deposit.

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

27 (23) "Overburden" means all of the earth and other materials that lie above a natural mineral deposit  
28 and also means the earth and other material after removal from their natural state in the process of mining.

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

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

5 (26) "Prospecting" means ~~the removal of overburden, core drilling, construction of roads, or any~~  
6 ~~other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural~~  
7 ~~mineral deposit;~~

8 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping,  
9 trenching, drilling, geophysical, or other techniques necessary to determine;

10 (i) the quality and quantity of overburden in an area; or

11 (ii) the location, quantity, or quality of a natural mineral deposit; or

12 (b) the gathering of environmental data to establish the conditions of an area before beginning strip-  
13 or underground-coal-mining and reclamation operations under this part.

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

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

19 (29) "Strip mining" means any part of the process followed in the production of mineral by the  
20 opencut method, including mining by the auger method or any similar method that penetrates a mineral  
21 deposit and removes mineral directly through a series of openings made by a machine that enters the  
22 deposit from a surface excavation or any other mining method or process in which the strata or overburden  
23 is removed or displaced in order to recover the mineral. For the purposes of this part only, strip mining also  
24 includes remining and coal preparation. The terms "remining" and "coal preparation" are not included in the  
25 definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

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

28 (31) "Surface owner" means:

29 (a) a person who holds legal or equitable title to the land surface and whose principal place of  
30 residence is on the land; ~~or~~

1           **(b) a person** who personally conducts farming or ranching operations upon a farm or ranch unit to  
 2 be directly affected by strip-mining operations or who receives directly a significant portion of income, if  
 3 any, from farming or ranching operations; or

4           **(c)** the state of Montana ~~where~~ when the state owns the surface.

5           (32) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of  
 6 the earth, that has been subjected to and influenced by genetic and environmental factors of parent  
 7 material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time,  
 8 and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

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

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

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

19           (36) "Written consent" means a written statement executed by the owner of the surface estate,  
 20 upon a form approved by the department, demonstrating that the owner consents to entry of an operator  
 21 for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and  
 22 reclamation operations that fully comply with the terms and requirements of this part."  
 23

24           **Section 2.** Section 82-4-221, MCA, is amended to read:

25           **"82-4-221. Mining permit required.** (1) An operator may not engage in strip or underground mining  
 26 without having first obtained from the department a permit designating the area of land affected by the  
 27 operation, ~~which~~ The designation ~~shall~~ must include all lands reasonably anticipated to be mined or  
 28 otherwise affected during the applicable 5-year period. The permit ~~shall~~ must authorize the operator to  
 29 engage in strip or underground mining upon the area of land described in ~~his~~ the application and designated  
 30 in the permit for a period of 5 years from the date of its issuance. ~~Such~~ The permit ~~shall be~~ is renewable

1 upon each 5-year anniversary ~~thereafter~~ after issuance upon application to the department at least ~~420~~ 240  
 2 but not more than ~~450~~ 300 days prior to the renewal date so long as the operator is in compliance with  
 3 the requirements of this part, the rules ~~hereunder~~ adopted to implement this part, and the reclamation plan  
 4 provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of  
 5 renewal. ~~Such~~ The renewal ~~shall~~ is further ~~be~~ subject to the denial provisions of 82-4-227, 82-4-234, and  
 6 82-4-251. On application for renewal, the burden ~~shall be~~ is on the opponents of renewal to demonstrate  
 7 that the permit should not be renewed. A permit ~~shall~~ must terminate if the permittee has not commenced  
 8 strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit.  
 9 However, the department may grant reasonable extensions of time upon a showing that ~~such~~ the  
 10 extensions are necessary by reason of litigation precluding the commencement or threatening substantial  
 11 economic loss to the permittee or by reason of conditions beyond the control and without the fault or  
 12 negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific  
 13 major electric generating facility, the permittee is considered to have commenced strip- or  
 14 underground-mining operations at ~~such~~ the time ~~as~~ the construction of the synthetic or generating facility  
 15 is initiated.

16 (2) As a condition to the issuance of ~~every~~ each permit issued under this part, an authorized  
 17 representative of the department shall, without advance notice, have the right of entry to, upon, or through  
 18 a strip- or underground-mining operation or any premises in which any records required to be maintained  
 19 under this part are located and may, at reasonable times and without delay, have access to copy any  
 20 records and inspect any monitoring equipment or method of operation required under this part. When an  
 21 inspection results from information provided to the department by any person, the department shall notify  
 22 that person when the inspection is proposed to be made and that person ~~shall~~ must be allowed to  
 23 accompany the inspector during the inspection.

24 (3) During the term of the permit, the permittee may submit an application for a revision of the  
 25 permit, together with a revised reclamation plan, to the department. The department may not approve the  
 26 application unless it finds that reclamation in accordance with this part would be accomplished. Application  
 27 for minor revision ~~shall~~ must be approved or disapproved within a reasonable time, depending on the scope  
 28 and complexity, but in no case longer than 120 days. Applications for major revisions are subject to all the  
 29 permit application requirements and procedures."  
 30

1           **Section 3.** Section 82-4-226, MCA, is amended to read:

2           **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any person  
3 on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing  
4 a valid prospecting permit issued by the department as provided in this section. A prospecting permit may  
5 not be issued until the person submits an application, the application is examined, amended if necessary,  
6 and approved by the department, and an adequate reclamation performance bond is posted, all of which  
7 prerequisites must be done in conformity with the requirements of this part.

8           (2) An application for a prospecting permit must be made in writing, notarized, and submitted to  
9 the department in duplicate upon forms prepared and furnished by it. The application must include among  
10 other things a prospecting map and a prospecting reclamation plan of substantially the same character as  
11 required for a surface-mining or underground-mining map and reclamation plan under this part. The  
12 department shall determine by rules the precise nature of the required prospecting map and reclamation  
13 plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number  
14 of holes to be drilled, methods to be used in sealing aquifers, and other information ~~as~~ that may be required  
15 by the department. The applicant shall state what types of prospecting and excavating techniques will be  
16 employed on the affected land. The application ~~shall~~ must also include any other or further information that  
17 the department may require.

18           (3) The application must be accompanied by a fee of \$100. This fee must be used as a credit  
19 toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the  
20 prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained  
21 before or at the time the prospecting permit expires.

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

26           (5) In the event that the holder of a prospecting permit desires to strip mine or underground mine  
27 the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or  
28 underground-mining permit, the department may permit the postponement of the reclamation of the acreage  
29 prospected if that acreage is incorporated into the complete reclamation plan submitted with the application  
30 for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating

1 under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan  
2 must be promptly reclaimed.

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

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

8 (8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to  
9 82-4-227 or 82-4-228, ~~and~~ that is not conducted for the purpose of determining the location, quality, or  
10 quantity of a natural mineral deposit, that is not conducted by drilling, and that does not remove more than  
11 250 tons of coal is not subject to subsections (1) through (7). However, a person who conducts ~~this~~  
12 prospecting described in this subsection shall file with the department a notice of intent to prospect that  
13 contains the information required by the department before commencing prospecting operations. If this  
14 prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the  
15 performance standards of the department's rules regulating the conduct and reclamation of prospecting  
16 operations that remove coal. The department may inspect these prospecting and reclamation operations  
17 at any reasonable time."

18

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

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

28 (2) The department may not approve the application for a prospecting, strip-mining, or  
29 underground-mining permit ~~where~~ when the area of land described in the application includes land having  
30 special, exceptional, critical, or unique characteristics or ~~that~~ when mining or prospecting on that area

1 would adversely affect the use, enjoyment, or fundamental character of neighboring land having special,  
2 exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these  
3 characteristics if it possesses special, exceptional, critical, or unique:

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

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

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

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

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

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

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

20 (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally  
21 subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors  
22 and those lands as to which the regulatory authority finds that if ~~the~~ any farming that will be interrupted,  
23 discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's  
24 agricultural production; or

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

27 (4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the  
28 year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located  
29 within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to  
30 conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are

1 precluded from being mined under this subsection, the commissioner shall certify to the secretary of interior  
 2 that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to  
 3 section 510(5) of Public Law 95-87.

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

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

18 (7) If the department finds that the operation will constitute a hazard to a dwelling ~~house~~, public  
 19 building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other  
 20 public property, the department shall delete those areas from the prospecting, strip-mining, or  
 21 underground-mining permit application before it can be approved. ~~In no case may strip-~~ Strip- or  
 22 underground-coal-mining may not be allowed within:

23 (a) 300 feet of any occupied dwelling, unless waived by the owner; ~~nor within~~

24 (b) 300 feet of any public building, school, church, community, or institutional building, or public  
 25 park; ~~nor within~~

26 (c) 100 feet of a cemetery; ~~nor within~~

27 (d) 100 feet of the outside right-of-way line of any public road, except where mine access roads  
 28 or haulage roads join the right-of-way line. The department may permit ~~the~~ roads to be relocated or the  
 29 area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in  
 30 the locality, a written finding is made that the interests of the public and the landowners affected will be

1 protected.

2 (8) ~~No strip~~ Strip- or underground-mining may not be conducted within 500 feet of active or  
3 abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners.  
4 The department shall permit an operator to mine near, through, or partially through an abandoned  
5 underground mine or closer to an active underground mine if:

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

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

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

18 (10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be  
19 issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to  
20 conserve coal will not occur. The department may require the applicant to submit any information it  
21 considers necessary for review of the coal conservation plan.

22 (11) Whenever information available to the department indicates that any strip- or  
23 underground-coal-mining operation that is owned or controlled by the applicant or by any person who owns  
24 or controls the applicant is currently in violation of Public Law 95-87, as amended, ~~or~~ any state law required  
25 by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department  
26 or agency in the United States pertaining to air or water environmental protection, the department may not  
27 issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision,  
28 until the applicant submits proof that the violation has been corrected or is in the process of being corrected  
29 to the satisfaction of the administering agency.

30 (12) The department may not issue a strip- or underground-coal-mining permit or amendment, other

1 than an incidental boundary revision, to any applicant ~~that~~ if it finds, after an opportunity for hearing, that  
2 the applicant or any person who owns or controls the applicant owns or controls or has controlled any a  
3 strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public  
4 Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, ~~of a~~ when the nature  
5 and duration of the violations and ~~with~~ resulting irreparable damage to the environment ~~to~~ indicate an intent  
6 not to comply with the provisions of this part.

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

12

-END-

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29 to gain access and to haul the mineral; processing facilities at or near the mine site or other ~~mine~~  
30 ~~associated~~ mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or

1 subsurface disturbance associated with strip mining or underground mining; and all activities necessary  
2 and incident to the reclamation of ~~such~~ those operations.

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

4 (6) "Board" means the board of land commissioners provided for in Article X, section 4, of the  
5 constitution of this state.

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

9 (8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,  
10 concentrating, or other processing or preparation.

11 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid  
12 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing  
13 for other than commercial purposes.

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

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

19 (11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough  
20 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance  
21 is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with  
22 the excavated overburden commonly being cast down the slope below the mineral seam and the operating  
23 bench.

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

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

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

30 (15) "Fill bench" means that portion of a bench or table ~~which~~ that is formed by depositing

1 overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

2 (16) "Imminent danger to the health and safety of the public" means the existence of any condition  
3 or practice or any violation of a permit or other requirement of this part in a strip- or  
4 underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial  
5 physical harm to persons outside the permit area before the condition, practice, or violation can be abated.  
6 A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected  
7 to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger  
8 during the time necessary for abatement.

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

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

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

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

18 (21) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in  
19 the process of producing and removing mineral from and reclaiming a designated strip-mine or  
20 underground-mine area, including coal preparation plants, and all activities, including excavation incident  
21 to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural  
22 mineral deposit.

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

27 (23) "Overburden" means all of the earth and other materials that lie above a natural mineral deposit  
28 and also means the earth and other material after removal from their natural state in the process of mining.

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

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

5 (26) "Prospecting" means ~~the removal of overburden, core drilling, construction of roads, or any~~  
6 ~~other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural~~  
7 ~~mineral deposit;~~

8 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping,  
9 trenching, ~~drilling~~, geophysical, or other techniques necessary to determine;

10 (i) the quality and quantity of overburden in an area; or

11 (ii) the location, quantity, or quality of a natural mineral deposit; or

12 (b) the gathering of environmental data to establish the conditions of an area before beginning strip-  
13 or underground-coal-mining and reclamation operations under this part.

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

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

19 (29) "Strip mining" means any part of the process followed in the production of mineral by the  
20 open-cut method, including mining by the auger method or any similar method that penetrates a mineral  
21 deposit and removes mineral directly through a series of openings made by a machine that enters the  
22 deposit from a surface excavation or any other mining method or process in which the strata or overburden  
23 is removed or displaced in order to recover the mineral. For the purposes of this part only, strip mining also  
24 includes remining and coal preparation. The terms "remining" and "coal preparation" are not included in the  
25 definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

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

28 (31) "Surface owner" means:

29 (a) a person who holds legal or equitable title to the land surface and whose principal place of  
30 residence is on the land; ~~or~~

1           **(b)** a person who personally conducts farming or ranching operations upon a farm or ranch unit to  
 2 be directly affected by strip-mining operations or who receives directly a significant portion of income, if  
 3 any, from farming or ranching operations; or

4           **(c)** the state of Montana ~~where~~ when the state owns the surface.

5           (32) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of  
 6 the earth, that has been subjected to and influenced by genetic and environmental factors of parent  
 7 material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time,  
 8 and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

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

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

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

19           (36) "Written consent" means a written statement executed by the owner of the surface estate,  
 20 upon a form approved by the department, demonstrating that the owner consents to entry of an operator  
 21 for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and  
 22 reclamation operations that fully comply with the terms and requirements of this part."  
 23

24           **Section 2.** Section 82-4-221, MCA, is amended to read:

25           **"82-4-221. Mining permit required.** (1) An operator may not engage in strip or underground mining  
 26 without having first obtained from the department a permit designating the area of land affected by the  
 27 operation, ~~which~~ The designation shall must include all lands reasonably anticipated to be mined or  
 28 otherwise affected during the applicable 5-year period. The permit ~~shall~~ must authorize the operator to  
 29 engage in strip or underground mining upon the area of land described in ~~his~~ the application and designated  
 30 in the permit for a period of 5 years from the date of its issuance. ~~Such~~ The permit ~~shall be~~ is renewable

1 upon each 5-year anniversary ~~thereafter~~ after issuance upon application to the department at least ~~120~~ 240  
2 but not more than ~~150~~ 300 days prior to the renewal date so long as the operator is in compliance with  
3 the requirements of this part, the rules ~~hereunder~~ adopted to implement this part, and the reclamation plan  
4 provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of  
5 renewal. ~~Such~~ The renewal ~~shall~~ is further ~~be~~ subject to the denial provisions of 82-4-227, 82-4-234, and  
6 82-4-251. On application for renewal, the burden ~~shall be~~ is on the opponents of renewal to demonstrate  
7 that the permit should not be renewed. A permit ~~shall~~ must terminate if the permittee has not commenced  
8 strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit.  
9 However, the department may grant reasonable extensions of time upon a showing that ~~such~~ the  
10 extensions are necessary by reason of litigation precluding the commencement or threatening substantial  
11 economic loss to the permittee or by reason of conditions beyond the control and without the fault or  
12 negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific  
13 major electric generating facility, the permittee is considered to have commenced strip- or  
14 underground-mining operations at ~~such~~ the time as the construction of the synthetic or generating facility  
15 is initiated.

16 (2) As a condition to the issuance of ~~every~~ each permit issued under this part, an authorized  
17 representative of the department shall, without advance notice, have the right of entry to, upon, or through  
18 a strip- or underground-mining operation or any premises in which any records required to be maintained  
19 under this part are located and may, at reasonable times and without delay, have access to copy any  
20 records and inspect any monitoring equipment or method of operation required under this part. When an  
21 inspection results from information provided to the department by any person, the department shall notify  
22 that person when the inspection is proposed to be made and that person ~~shall~~ must be allowed to  
23 accompany the inspector during the inspection.

24 (3) During the term of the permit, the permittee may submit an application for a revision of the  
25 permit, together with a revised reclamation plan, to the department. The department may not approve the  
26 application unless it finds that reclamation in accordance with this part would be accomplished. Application  
27 for minor revision ~~shall~~ must be approved or disapproved within a reasonable time, depending on the scope  
28 and complexity, but in no case longer than 120 days. Applications for major revisions are subject to all the  
29 permit application requirements and procedures."  
30

1           **Section 3.** Section 82-4-226, MCA, is amended to read:

2           **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any person  
3 on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing  
4 a valid prospecting permit issued by the department as provided in this section. A prospecting permit may  
5 not be issued until the person submits an application, the application is examined, amended if necessary,  
6 and approved by the department, and an adequate reclamation performance bond is posted, all of which  
7 prerequisites must be done in conformity with the requirements of this part.

8           (2) An application for a prospecting permit must be made in writing, notarized, and submitted to  
9 the department in duplicate upon forms prepared and furnished by it. The application must include among  
10 other things a prospecting map and a prospecting reclamation plan of substantially the same character as  
11 required for a surface-mining or underground-mining map and reclamation plan under this part. The  
12 department shall determine by rules the precise nature of the required prospecting map and reclamation  
13 plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number  
14 of holes to be drilled, methods to be used in sealing aquifers, and other information ~~as~~ that may be required  
15 by the department. The applicant shall state what types of prospecting and excavating techniques will be  
16 employed on the affected land. The application ~~shall~~ must also include any other or further information that  
17 the department may require.

18           (3) The application must be accompanied by a fee of \$100. This fee must be used as a credit  
19 toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the  
20 prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained  
21 before or at the time the prospecting permit expires.

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

26           (5) In the event that the holder of a prospecting permit desires to strip mine or underground mine  
27 the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or  
28 underground-mining permit, the department may permit the postponement of the reclamation of the acreage  
29 prospected if that acreage is incorporated into the complete reclamation plan submitted with the application  
30 for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating

1 under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan  
2 must be promptly reclaimed.

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

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

8 (8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to  
9 82-4-227 or 82-4-228, ~~and AND~~ that is not conducted for the purpose of determining the location, quality,  
10 or quantity of a natural mineral deposit, ~~that is not conducted by drilling, and that does not remove more~~  
11 ~~than 250 tons of coal~~ is not subject to subsections (1) through (7). IN ADDITION, PROSPECTING THAT  
12 IS CONDUCTED TO DETERMINE THE LOCATION, QUALITY, OR QUANTITY OF A NATURAL MINERAL  
13 DEPOSIT AND THAT DOES NOT SUBSTANTIALLY DISTURB THE NATURAL LAND SURFACE IS NOT  
14 SUBJECT TO SUBSECTIONS (1) THROUGH (7). However, a person who conducts ~~this~~ prospecting  
15 described in this subsection shall file with the department a notice of intent to prospect that contains the  
16 information required by the department before commencing prospecting operations. If this prospecting  
17 substantially disturbs the natural land surface, it must be conducted in accordance with the performance  
18 standards of the department's rules regulating the conduct and reclamation of prospecting operations that  
19 remove coal. The department may inspect these prospecting and reclamation operations at any reasonable  
20 time."

21

22 **Section 4.** ~~Section 82-4-227, MCA, is amended to read:~~

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

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

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

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

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

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

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

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

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

23           ~~(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally~~  
 24 ~~subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors~~  
 25 ~~and those lands as to which the regulatory authority finds that if the any farming that will be interrupted,~~  
 26 ~~discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's~~  
 27 ~~agricultural production; or~~

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

30           ~~(4) Subsection (3)(b) does not affect those strip or underground coal mining operations that in the~~

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

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

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

21 ~~(7) If the department finds that the operation will constitute a hazard to a dwelling house, public~~  
22 ~~building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other~~  
23 ~~public property, the department shall delete these areas from the prospecting, strip mining, or~~  
24 ~~underground mining permit application before it can be approved. In no case may strip Strip or~~  
25 ~~underground coal mining may not be allowed within:~~

26 ~~(a) 300 feet of any occupied dwelling, unless waived by the owner,; nor within~~

27 ~~(b) 300 feet of any public building, school, church, community, or institutional building, or public~~  
28 ~~park; nor within~~

29 ~~(c) 100 feet of a cemetery; nor within~~

30 ~~(d) 100 feet of the outside right of way line of any public road, except where mine access roads~~

1 ~~or haulage roads join the right of way line. The department may permit the roads to be relocated or the~~  
2 ~~area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in~~  
3 ~~the locality, a written finding is made that the interests of the public and the landowners affected will be~~  
4 ~~protected.~~

5 ~~(8) No strip Strip or underground mining may not be conducted within 500 feet of active or~~  
6 ~~abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners.~~  
7 ~~The department shall permit an operator to mine near, through, or partially through an abandoned~~  
8 ~~underground mine or closer to an active underground mine if:~~

9 ~~(a) the nature, timing, and sequencing of specific strip mine activities and specific~~  
10 ~~underground mine activities are jointly approved by the department and the regulatory authority concerned~~  
11 ~~with the health and safety of underground miners; and~~

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

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

21 ~~(10) A permit or major permit revision for a strip or underground coal mining operation may not be~~  
22 ~~issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to~~  
23 ~~conserve coal will not occur. The department may require the applicant to submit any information it~~  
24 ~~considers necessary for review of the coal conservation plan.~~

25 ~~(11) Whenever information available to the department indicates that any strip or~~  
26 ~~underground coal mining operation that is owned or controlled by the applicant or by any person who owns~~  
27 ~~or controls the applicant is currently in violation of Public Law 95-87, as amended, or any state law required~~  
28 ~~by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department~~  
29 ~~or agency in the United States pertaining to air or water environmental protection, the department may not~~  
30 ~~issue a strip or underground coal mining permit or amendment, other than an incidental boundary revision,~~

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

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

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

15

-END-

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HOUSE BILL NO. 162  
INTRODUCED BY TAYLOR  
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE DEFINITION OF PROSPECTING; EXTENDING THE APPLICATION PERIOD FOR RENEWAL OF A MINING PERMIT; ~~ADDING CRITERIA FOR REFUSAL OF A PROSPECTING PERMIT;~~ AND AMENDING SECTIONS 82-4-203, 82-4-221, AND 82-4-226, ~~AND 82-4-227~~, MCA."

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

THERE ARE NO CHANGES IN THIS BILL AND WILL NOT BE REPRINTED. PLEASE REFER TO YELLOW COPY FOR COMPLETE TEXT.

## 1 HOUSE BILL NO. 162

2 INTRODUCED BY TAYLOR

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE DEFINITION OF PROSPECTING; EXTENDING  
6 THE APPLICATION PERIOD FOR RENEWAL OF A MINING PERMIT; ~~ADDING CRITERIA FOR REFUSAL OF~~  
7 ~~A PROSPECTING PERMIT;~~ AND AMENDING SECTIONS 82-4-203, 82-4-221, AND 82-4-226, ~~AND~~  
8 ~~82-4-227~~, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11

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

13 "82-4-203. **Definitions.** Unless the context requires otherwise, in this part, the following definitions  
14 apply:

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

17 (2) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where  
18 water availability is sufficient for subirrigation or flood irrigation agricultural activities;

19 (b) ~~but the~~ The term does not include upland areas ~~which~~ that are generally overlain by a thin  
20 veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated  
21 runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

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

25 (4) "Area of land affected" means the area of land from which overburden is to be or has been  
26 removed and upon which the overburden is to be or has been deposited ~~and~~. The term includes all land  
27 overlying any tunnels, shafts, or other excavations used to extract the mineral; lands affected by the  
28 construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads  
29 to gain access and to haul the mineral; processing facilities at or near the mine site or other ~~mine~~  
30 ~~associated~~ mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or

1 subsurface disturbance associated with strip mining or underground mining, and all activities necessary  
2 and incident to the reclamation of ~~such~~ those operations.

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

4 (6) "Board" means the board of land commissioners provided for in Article X, section 4, of the  
5 constitution of this state.

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

9 (8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,  
10 concentrating, or other processing or preparation.

11 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid  
12 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing  
13 for other than commercial purposes.

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

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

19 (11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough  
20 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance  
21 is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with  
22 the excavated overburden commonly being cast down the slope below the mineral seam and the operating  
23 bench.

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

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

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

30 (15) "Fill bench" means that portion of a bench or table ~~which~~ that is formed by depositing

1 overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

2 (16) "Imminent danger to the health and safety of the public" means the existence of any condition  
3 or practice or any violation of a permit or other requirement of this part in a strip- or  
4 underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial  
5 physical harm to persons outside the permit area before the condition, practice, or violation can be abated.  
6 A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected  
7 to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger  
8 during the time necessary for abatement.

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

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

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

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

18 (21) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in  
19 the process of producing and removing mineral from and reclaiming a designated strip-mine or  
20 underground-mine area, including coal preparation plants, and all activities, including excavation incident  
21 to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural  
22 mineral deposit.

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

27 (23) "Overburden" means all of the earth and other materials that lie above a natural mineral deposit  
28 and also means the earth and other material after removal from their natural state in the process of mining.

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

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

5 (26) "Prospecting" means ~~the removal of overburden, core drilling, construction of roads, or any~~  
 6 ~~other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural~~  
 7 ~~mineral deposit;~~

8 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping,  
 9 trenching, ~~drilling~~, geophysical, or other techniques necessary to determine;

10 (i) the quality and quantity of overburden in an area; or

11 (ii) the location, quantity, or quality of a natural mineral deposit; or

12 (b) the gathering of environmental data to establish the conditions of an area before beginning strip-  
 13 or underground-coal-mining and reclamation operations under this part.

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

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

19 (29) "Strip mining" means any part of the process followed in the production of mineral by the  
 20 opencut method, including mining by the auger method or any similar method that penetrates a mineral  
 21 deposit and removes mineral directly through a series of openings made by a machine that enters the  
 22 deposit from a surface excavation or any other mining method or process in which the strata or overburden  
 23 is removed or displaced in order to recover the mineral. For the purposes of this part only, strip mining also  
 24 includes remining and coal preparation. The terms "remining" and "coal preparation" are not included in the  
 25 definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

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

28 (31) "Surface owner" means:

29 (a) a person who holds legal or equitable title to the land surface and whose principal place of  
 30 residence is on the land; ~~or~~

1           **(b)** a person who personally conducts farming or ranching operations upon a farm or ranch unit to  
 2 be directly affected by strip-mining operations or who receives directly a significant portion of income, if  
 3 any, from farming or ranching operations; or

4           **(c)** the state of Montana ~~where~~ when the state owns the surface.

5           (32) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of  
 6 the earth, that has been subjected to and influenced by genetic and environmental factors of parent  
 7 material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time,  
 8 and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

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

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

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

19           (36) "Written consent" means a written statement executed by the owner of the surface estate,  
 20 upon a form approved by the department, demonstrating that the owner consents to entry of an operator  
 21 for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and  
 22 reclamation operations that fully comply with the terms and requirements of this part."  
 23

24           **Section 2.** Section 82-4-221, MCA, is amended to read:

25           **"82-4-221. Mining permit required.** (1) An operator may not engage in strip or underground mining  
 26 without having first obtained from the department a permit designating the area of land affected by the  
 27 operation, ~~which~~ The designation shall must include all lands reasonably anticipated to be mined or  
 28 otherwise affected during the applicable 5-year period. The permit ~~shall~~ must authorize the operator to  
 29 engage in strip or underground mining upon the area of land described in ~~the~~ the application and designated  
 30 in the permit for a period of 5 years from the date of its issuance. ~~Such~~ The permit ~~shall be~~ is renewable

1 upon each 5-year anniversary ~~thereafter~~ after issuance upon application to the department at least ~~120~~ 240  
2 but not more than ~~150~~ 300 days prior to the renewal date so long as the operator is in compliance with  
3 the requirements of this part, the rules ~~hereunder~~ adopted to implement this part, and the reclamation plan  
4 provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of  
5 renewal. ~~Such~~ The renewal ~~shall~~ is further ~~be~~ subject to the denial provisions of 82-4-227, 82-4-234, and  
6 82-4-251. On application for renewal, the burden ~~shall be~~ is on the opponents of renewal to demonstrate  
7 that the permit should not be renewed. A permit ~~shall~~ must terminate if the permittee has not commenced  
8 strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit.  
9 However, the department may grant reasonable extensions of time upon a showing that ~~such~~ the  
10 extensions are necessary by reason of litigation precluding the commencement or threatening substantial  
11 economic loss to the permittee or by reason of conditions beyond the control and without the fault or  
12 negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific  
13 major electric generating facility, the permittee is considered to have commenced strip- or  
14 underground-mining operations at ~~such~~ the time ~~as~~ the construction of the synthetic or generating facility  
15 is initiated.

16 (2) As a condition to the issuance of ~~every~~ each permit issued under this part, an authorized  
17 representative of the department shall, without advance notice, have the right of entry to, upon, or through  
18 a strip- or underground-mining operation or any premises in which any records required to be maintained  
19 under this part are located and may, at reasonable times and without delay, have access to copy any  
20 records and inspect any monitoring equipment or method of operation required under this part. When an  
21 inspection results from information provided to the department by any person, the department shall notify  
22 that person when the inspection is proposed to be made and that person ~~shall~~ must be allowed to  
23 accompany the inspector during the inspection.

24 (3) During the term of the permit, the permittee may submit an application for a revision of the  
25 permit, together with a revised reclamation plan, to the department. The department may not approve the  
26 application unless it finds that reclamation in accordance with this part would be accomplished. Application  
27 for minor revision ~~shall~~ must be approved or disapproved within a reasonable time, depending on the scope  
28 and complexity, but in no case longer than 120 days. Applications for major revisions are subject to all the  
29 permit application requirements and procedures.”  
30

1           **Section 3.** Section 82-4-226, MCA, is amended to read:

2           **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any person  
3 on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing  
4 a valid prospecting permit issued by the department as provided in this section. A prospecting permit may  
5 not be issued until the person submits an application, the application is examined, amended if necessary,  
6 and approved by the department, and an adequate reclamation performance bond is posted, all of which  
7 prerequisites must be done in conformity with the requirements of this part.

8           (2) An application for a prospecting permit must be made in writing, notarized, and submitted to  
9 the department in duplicate upon forms prepared and furnished by it. The application must include among  
10 other things a prospecting map and a prospecting reclamation plan of substantially the same character as  
11 required for a surface-mining or underground-mining map and reclamation plan under this part. The  
12 department shall determine by rules the precise nature of the required prospecting map and reclamation  
13 plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number  
14 of holes to be drilled, methods to be used in sealing aquifers, and other information ~~as~~ that may be required  
15 by the department. The applicant shall state what types of prospecting and excavating techniques will be  
16 employed on the affected land. The application ~~shall~~ must also include any other or further information that  
17 the department may require.

18           (3) The application must be accompanied by a fee of \$100. This fee must be used as a credit  
19 toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the  
20 prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained  
21 before or at the time the prospecting permit expires.

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

26           (5) In the event that the holder of a prospecting permit desires to strip mine or underground mine  
27 the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or  
28 underground-mining permit, the department may permit the postponement of the reclamation of the acreage  
29 prospected if that acreage is incorporated into the complete reclamation plan submitted with the application  
30 for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating

1 under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan  
2 must be promptly reclaimed.

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

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

8 (8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to  
9 82-4-227 or 82-4-228, ~~and~~ AND that is not conducted for the purpose of determining the location, quality,  
10 or quantity of a natural mineral deposit, ~~that is not conducted by drilling, and that does not remove more~~  
11 ~~than 250 tons of coal~~ is not subject to subsections (1) through (7). IN ADDITION, PROSPECTING THAT  
12 IS CONDUCTED TO DETERMINE THE LOCATION, QUALITY, OR QUANTITY OF A NATURAL MINERAL  
13 DEPOSIT AND THAT DOES NOT SUBSTANTIALLY DISTURB THE NATURAL LAND SURFACE IS NOT  
14 SUBJECT TO SUBSECTIONS (1) THROUGH (7). However, a person who conducts ~~this~~ prospecting  
15 described in this subsection shall file with the department a notice of intent to prospect that contains the  
16 information required by the department before commencing prospecting operations. If this prospecting  
17 substantially disturbs the natural land surface, it must be conducted in accordance with the performance  
18 standards of the department's rules regulating the conduct and reclamation of prospecting operations that  
19 remove coal. The department may inspect these prospecting and reclamation operations at any reasonable  
20 time."

21

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

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

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

7           ~~(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic~~  
 8 ~~steek;~~

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

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

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

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

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

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

23           ~~(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally~~  
 24 ~~subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors~~  
 25 ~~and those lands as to which the regulatory authority finds that if the any farming that will be interrupted,~~  
 26 ~~discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's~~  
 27 ~~agricultural production; or~~

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

30           ~~(4) Subsection (3)(b) does not affect those strip or underground coal mining operations that in the~~

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

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

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

21 ~~(7) If the department finds that the operation will constitute a hazard to a dwelling house, public~~  
 22 ~~building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other~~  
 23 ~~public property, the department shall delete those areas from the prospecting, strip mining, or~~  
 24 ~~underground mining permit application before it can be approved. In no case may strip Strip or~~  
 25 ~~underground coal mining may not be allowed within:~~

26 ~~(a) 300 feet of any occupied dwelling, unless waived by the owner, nor within~~

27 ~~(b) 300 feet of any public building, school, church, community, or institutional building, or public~~  
 28 ~~park; nor within~~

29 ~~(c) 100 feet of a cemetery; nor within~~

30 ~~(d) 100 feet of the outside right of way line of any public road, except where mine access roads~~

1 ~~er haulage roads join the right of way line. The department may permit the roads to be relocated or the~~  
2 ~~area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in~~  
3 ~~the locality, a written finding is made that the interests of the public and the landowners affected will be~~  
4 ~~protected.~~

5 ~~(8) No strip Strip or underground mining may not be conducted within 500 feet of active or~~  
6 ~~abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners.~~  
7 ~~The department shall permit an operator to mine near, through, or partially through an abandoned~~  
8 ~~underground mine or closer to an active underground mine if:~~

9 ~~(a) the nature, timing, and sequencing of specific strip mine activities and specific~~  
10 ~~underground mine activities are jointly approved by the department and the regulatory authority concerned~~  
11 ~~with the health and safety of underground miners; and~~

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

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

21 ~~(10) A permit or major permit revision for a strip or underground coal mining operation may not be~~  
22 ~~issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to~~  
23 ~~conserve coal will not occur. The department may require the applicant to submit any information it~~  
24 ~~considers necessary for review of the coal conservation plan.~~

25 ~~(11) Whenever information available to the department indicates that any strip or~~  
26 ~~underground coal mining operation that is owned or controlled by the applicant or by any person who owns~~  
27 ~~or controls the applicant is currently in violation of Public Law 95-87, as amended, or any state law required~~  
28 ~~by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department~~  
29 ~~or agency in the United States pertaining to air or water environmental protection, the department may not~~  
30 ~~issue a strip or underground coal mining permit or amendment, other than an incidental boundary revision,~~

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

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

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

15

-END-