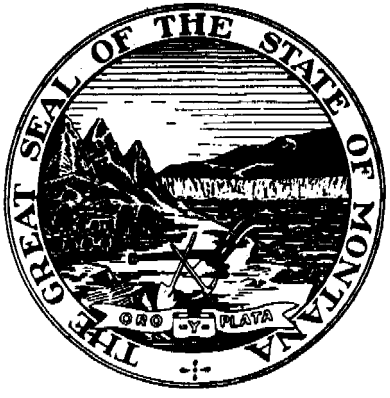
MONTANA ADMINISTRATIVE REGISTER



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NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend, or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59601.

NOTICE: The July 1977 through June 1979 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana 59601.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule ARM 2-2.2(1)-P200, MODEL PROCEDURAL RULE	)	NOTICE OF PROPOSED AMENDMENT OF RULE ARM 2-2.2(1)-P200, MODEL PROCEDURAL RULE, concerning the adoption of the Attorney General's Model Rules
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 25, 1980, the Department of Administration proposes to amend rule ARM 2-2.2(1)-P200, MODEL PROCEDURAL RULE, which adopts the Attorney General's Model Procedural Rules by reference.

2. The rule as proposed to be amended provides as follows:

2-2.2(1)-P200 MODEL PROCEDURAL RULE (1) ~~Pursuant to Attorney General Opinion Number 2, Volume Number 35, dated January 17, 1973, the Department of Administration is not required by law to hold hearings before acting under Title 82, Chapter 1, 19 and 33. The Department of Administration, when carrying out its prescribed functions under said chapters, is not an agency as defined in Section 82-4202(1), R.C.M. 1947. The Attorney General's Opinion has been further interpreted to mean that the Department of Administration does not have the authority to adjudicate contested cases or to issue declaratory rules. In the event, or to the extent that the Department of Administration becomes an agency within the meaning of the Administrative Procedure Act, the~~ The Department of Administration ~~has herein adopted and incorporated~~ hereby adopts the Attorney General's Model ~~Procedural~~ Rules one through ~~thirty-eight~~ 28 by reference to such rules as stated in ~~ARM 1.1.6(1)-0600~~ ARM 1-1.6(1)-P610 through ARM 1-1.6-(2)-P6240 ~~of this code.~~.

3. The rule is proposed to be amended to delete obsolete language from its text.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to John Bobinski, Staff Attorney, Department of Administration, Insurance and Legal Division, Capitol Station, Helena, Montana 59601, no later than April 11, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along

with any written comments he has to John Bobinski, Staff Attorney, Department of Administration, Insurance and Legal Division, Capitol Station, Helena, Montana 59601, no later than April 11, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten Percent of those persons directly affected has been determined to be 69,441 persons based on the population of the State of Montana (1970 census).

7. The authority of the agency to make the proposed amendment is based on section 2-4-201, MCA, and the rule implements section 2-4-201, MCA.

In the matter of the repeal of rule ARM 2-2.2(2)-S210, APPLICABILITY OF RULES	NOTICE OF PROPOSED REPEAL OF RULE ARM 2-2.2(2)-S210, APPLICABILITY OF RULES, concerning the applicability of the Department's procedural rules in certain situations NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On April 25, 1980, the Department of Administration proposes to repeal rule ARM 2-2.2(2)-S210, APPLICABILITY OF RULES, concerning the applicability of the Department's procedural rules in certain situations.

2. The rule proposed to be repealed is on pages 2-17.1 and 2-18 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because it is obsolete and no longer used by the Department.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to John Bobinski, Staff Attorney, Department of Administration, Insurance and Legal Division, Capitol Station, Helena, Montana 59601, no later than April 11, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make

written request for a hearing and submit this request along with any written comments he has to John Bobinski, Staff Attorney, Department of Administration, Insurance and Legal Division, Capitol Station, Helena, Montana 59601, no later than April 11, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten Percent of those persons directly affected has been determined to be 69,441 persons based on the population of the State of Montana (1970 census).

7. The authority of the agency to make the proposed amendment is based on section 2-4-201, MCA, and the rule implements section 2-4-201, MCA.

By: David M. Lewis
David M. Lewis, Director
Department of Administration

Certified to the Secretary of State March 4, 1980.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new Rules: Rule I, Rule II, Rule III, Rule IV, Rule V, Rule VI, Rule VII, Rule VIII, Rule IX, Rule X	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I THROUGH X

TO: All Interested Persons

1. On the 3rd day of April, 1980, at 10:00 A.M., a public hearing will be held in room 225 of the Scott Hart Building, 6th and Roberts, Helena, Montana to consider the adoption of new Rules: Rule I, Rule II, Rule III, Rule IV, Rule V, Rule VI, Rule VII, Rule VIII, Rule IX, Rule X.

2. The Rules proposed to be adopted provide as follows:

RULE I SALE OR USE OF AQUATIC HERBICIDES PROHIBITED--EXCEPTION. The sale, exchange of, gift of, application or attempted application of any aquatic herbicide or chemical intended for the control or remission of aquatic vegetation in any irrigation system, water conveyance system, lake, pond, stream, or other body of water in Montana, is hereby prohibited. Provided however, that the sale, use and application of aquatic herbicides may be allowed under the restrictions, limitations, and procedures set forth in these rules.

RULE II SALE OF AQUATIC HERBICIDES. Only pesticide dealers licensed under the Act may sell, exchange, or distribute a registered aquatic herbicides, and then, only under the following conditions:

(1) Sales or distribution can only be made to a licensed or certified applicator who holds an aquatic pesticide training credential issued by the department.

(2) Each dealer must maintain a complete record of each sale, on the forms supplied by the department. The Application For Aquatic Herbicide Permit and the Permit form issued by the department, constitutes the entire record required to be kept under this RULE. These records must be retained for a period of 3 years from date of each sale.

RULE III USE OF AQUATIC HERBICIDES. Only persons licensed or certified and holding an aquatic pesticide training credential issued by the department may purchase, use, and apply an aquatic herbicide to waters in Montana, and then only after receiving a permit authorizing that specific application.

RULE IV APPLICATION FOR PERMIT. Applicators possessing an aquatic herbicide training credential may make application for a permit to purchase, use, or apply an aquatic herbicide in the following manner:

(1) For all aquatic herbicides EXCEPT acrylaldehyde (acrolein) and/or aromatic petroleum distillates (xylene) the licensed or certified aquatic herbicide applicator shall either;

(a) complete an Application For Aquatic Herbicide Permit form, in the presence of the dealer, and give completed form to the dealer. The dealer may then deliver the requested aquatic herbicide to the licensed or certified applicator. The dealer shall return a copy of the Application For Aquatic Herbicide Permit form to the licensed or certified applicator, keep a copy for his records, and immediately forward the original to the department. Upon the completion, signing, and delivery by the applicator-purchaser to the dealer, of the Application For Aquatic Herbicide Permit form, the applicator may proceed with the application in the manner proposed on said application; or

(b) in the event the applicator already has the aquatic herbicide to be applied in his possession the applicator may make application for a permit by sending the completed Application For Aquatic Herbicide Permit to the department. The department will respond by telephone, allowing or denying the chemical application the day the completed application is received. If the chemical application is denied, the reason(s) will be given, allowing the applicator the opportunity to overcome the denial specifications. The formal written authorization allowing the aquatic herbicide application will be mailed to the applicant within 2 working days of the departments decision.

(2) For acrylaldehyde (acrolein) and/or aromatic petroleum distillates (xylene) the licensed or certified aquatic herbicide applicator shall, prior to each purchase and each application, submit a completed Application For Aquatic Herbicide Permit form and a preliminary Report of Application form together with all copies, to the department. Following evaluation, if the application is approved, a permit shall be issued and transmitted directly to the dealer and to the certified applicator named in the application, allowing the sale, delivery, and application to be made. The department will respond to a completed application within 10 days of its receipt by the department. The department will also transmit a copy of the Application For Aquatic Herbicide Permit and the Report of Application to the dealer and to the said applicator, for their respective records. Only a certified applicator holding an aquatic herbicide credential may purchase, use, and apply acrylaldehyde (acrolein) or any other EPA restricted use aquatic herbicide.

RULE V APPLICATOR RECORDS. Each applicator must maintain a record of each purchase and each application of an aquatic herbicide. The required record shall consist of the applicator's copy of the Application For Aquatic Herbicide Permit form, the Permit issued by the department, and the applicator's copy of the report of Application. These records must be retained for the period of time specified in Rule II. Each applicator shall mail a completed Report of Application to the department no later than 48 hours following the completion of

an application. The information on the form shall be sufficiently detailed to account for all purchases and usages of aquatic herbicides, and shall take into account any aquatic herbicides on hand by each applicator, at the time the rules go into effect.

RULE VI APPLICATOR INCIDENT REPORT. Any person who through his own actions or omissions, or the actions or omission of his family or employees, causes or allows any aquatic herbicide to escape into or be deposited into any public waters or private waters not his own, or causes or allows any aquatic herbicide to escape onto or be deposited onto the person, or lands or property of another not the person hiring or contracting for his services, shall provide notice to the department, by the quickest means possible immediately following said pesticide misapplication or escape, specifying the geographic location of the incident, the name of the pesticide involved, the name(s) and address(es) of the person(s) whose waters, land, person or property, including the State of Montana's, was subjected to the pesticide application.

RULE VII AQUATIC PESTICIDE TRAINING CREDENTIAL. Any person who has met the standards and requirements of the department and has prior to, or concurrently been issued a license or certificate allowing him to apply pesticides without supervision, may apply to the department for an aquatic pesticide training credential. The applicant shall be required to attend an aquatic pesticide training course approved by the department, and thereafter shall be granted a credential establishing his successful completion of the course and which will allow him to purchase aquatic herbicides in the manner set forth above. Applicators granted a credential shall be provided a supply of Application For Aquatic Herbicide Permit forms and Report of Application forms, at no cost to the applicator.

RULE VIII PERSONAL LIABILITY FOR DAMAGES. Nothing in these regulations shall be construed to relieve any person, including landowner or applicator, from liability for any damage to the person, lands, water, or other property of another including the state, caused by his use of aquatic pesticides even though such use conforms to the rules of the department.

RULE IX VIOLATIONS. Any person convicted of violating any of the provisions of the rules of this sub-chapter shall be adjudged guilty of a misdemeanor and punished accordingly, and each chemical application in violation shall be deemed a separate violation. Whenever any person has applied aquatic herbicides in violation to the provisions of these rules, or who reasonably appears to intend to apply aquatic herbicides in violation of the provisions of these rules, the department may seek a temporary restraining order or permanent injunction against the offender or potential offender, in state district court. In addition, the department may bring an administrative action for purposes of cancelling, suspending, modifying or otherwise limiting the license or certificate of any licensed

or certified applicator violating these rules.

RULE X EXPIRATION DATE OF RULES. These rules will expire January 1, 1982 unless specifically extended or re-enacted prior to that date.

3. The rules proposed to be adopted provide a critically needed mandatory training program on the application of aquatic pesticide; to grant credentials to persons trained in aquatic herbicide applications. To provide a means of control of sale and application of aquatic herbicides thereby preventing contamination of waters in the state while providing for needed applications of aquatic herbicides.

4. Interested persons may present their data, views or argument either orally or in writing, at the hearing, and persons wishing to submit their data, views or argument in writing may do so any time up to and including the 10th day of April, 1980.

5. Raymond Brault, Scott Hart Building, 6th and Roberts Helena, Montana, 59601 has been designated by the Director of the Department of Agriculture to preside over and conduct the hearing.

6. The authority of the agency to make the proposed rule is based on: Title 80, Chapter 8, Section 105 M.C.A.
IMP - same as above.

W. Gordon McOmber, Director

Certified to the Secretary of State March 4 , 1980.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rule 16-2.14(8)-S14315, pertaining to solid waste management	NOTICE OF PROPOSED AMENDMENT OF RULE 16-2.14(8)-S14315 (Solid Waste Management) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 21, 1980, the Department of Health and Environmental Sciences proposes to amend rule 16-2.14(8)-S14315, which provides for the storage, treatment, recycling, recovery, and disposal of solid wastes.

2. The amendments to rule 16-2.14(8)-S14315 which are proposed consist of deletions in subsection (7) of the rule as set forth below. The remainder of the rule is unaffected.

(7) Operation and maintenance. Any person who maintains or operates a solid waste management system shall maintain and operate such system in conformance with the requirements of this section, the plan of operation and maintenance approved by the department, all local zoning, system planning, building, and protective covenant provisions, and any other legal requirements that may be in effect. Each proposed solid waste management system will be evaluated on a case-by-case basis, taking into consideration the physical characteristics of the disposal site(s), the types and amounts of wastes, and the operation and maintenance plan for that system. The following criteria shall apply to the review of a proposed system for the disposal of solid waste:

(a) Operation and maintenance plan requirements. The operation and maintenance plan shall include:

(i) if for use by the public, what days and times the facility(ies) will be open;

(ii) how access and traffic will be restricted or controlled;

(iii) proposed equipment the system will utilize:

(iv) general description of the proposed solid waste management system;

(v) maintenance schedule concerning solid waste handling and disposal;

(vi) provision for litter control, if applicable;

(vii) types of waste the proposed facility(ies) will accept; and

(viii) plan for reclamation of the disposal site and the land's ultimate use.

(b) General operational and maintenance requirements.

(i) Open burning at all sites is prohibited ~~unless a permit has been obtained from the department.~~

(ii) Dumping of solid waste shall be confined to areas

within the disposal site that can be effectively maintained and operated in accordance with this rule This shall be controlled by supervision, fencing, signs or similar means approved by the department.

(iii) Effective means shall be taken to control litter at solid waste storage and disposal facilities;

(iv) Flies and other insects, as well as rodents, shall be effectively controlled;

(v) Salvaging of materials at all sites is expressly prohibited unless the licensee demonstrates to the department's satisfaction that it can be done properly.

(c) Specific operational and maintenance requirements.

(i) Class I solid waste disposal sites. Due to the hazardous nature of the waste that may be processed at these sites, strict supervision is required when such sites are open. Sites shall be fenced to prevent unauthorized access.

All Class I sites using landfilling methods shall cover Group I wastes with a minimum of twelve (12) inches of suitable earth cover material after each operating day and at least four (4) feet of earth cover material within one week after the final deposit of solid waste. These steps must be taken unless the department is satisfied that the licensee has shown good cause for not covering.

Where other solid waste management methods are proposed to dispose of Group I wastes, the operation and maintenance plan must demonstrate to the department's satisfaction that such disposal methods pose no danger to man and the environment. Group II wastes disposed at Class I sites shall satisfy all Class II disposal requirements.

(ii) Class II solid waste disposal sites. All Class II sites using landfilling methods shall compact and cover solid waste with a layer of at least six (6) inches of approved earth cover material at the end of each operating day and at least two (2) feet of approved earth cover material within one week after the final deposit of solid waste at any portion of the site. ~~These steps must be taken unless the department is satisfied that the licensee has shown good cause for not covering.~~

EPA's 1972 publication, "Sanitary Landfill Design and Operation", (#SW-65ts) shall be used as the general landfill design and operation manual for purposes of this rule. The department may develop or adopt guidelines for other solid waste disposal methods and procedures. Semisolids should be mixed with other solid waste to prevent localized leaching; or separate, specialized disposal areas should be developed. Sites shall be fenced to prevent unauthorized access and shall be supervised when open.

Where refuse containers are utilized as part of a management system for Group II solid wastes, all containers shall

be maintained and kept in a sanitary manner and emptied at least once a week.

(iii) Class III solid waste disposal sites. Although these sites are not required to be covered by earth materials daily, they shall be covered periodically.

(iv) Resource recovery and solid waste treatment facilities. Resource recovery and solid waste treatment facilities and components thereof shall be designed, constructed, maintained, and operated so as to control litter, insects and rodents, odor, aesthetics, residues, waste water treatment, and air pollutants.

3. The first deletion of the proposed amendments conforms the rule to Rule 16-2.14(1)-S1490 which does not allow permits for opening burning at solid waste disposal sites. The second deletion of the proposed amendment reflects the department's policy of the necessity, without exception, of the cover requirements for Class II solid waste disposal sites.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601, no later than April 17, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon at the address shown in paragraph 4 no later than April 17, 1980.

6. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons based on the number of solid waste disposal sites in Montana.

7. The authority of the Department of Health and Environmental Sciences to make the proposed amendment is based on Section 75-10-204, MCA, and the rule implements Section 75-10-204, MCA.

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State March 4, 1980

STATE OF MONTANA

DEPARTMENT OF JUSTICE

In the matter of the adoption of a rule adding to the list of regulated precursors to dangerous drugs	)))))	NOTICE OF PROPOSED ADOPTION OF A RULE (Precursors to Dangerous Drugs) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 15, 1980, the Department of Justice proposes to adopt a rule adding to the list of regulated precursors to dangerous drugs in section 50-32-401(1) MCA.

2. The proposed rule provides as follows: RULE I PRECURSORS TO DANGEROUS DRUGS The following substances are precursors to dangerous drugs, regulated by title 50, chapter 32, part 4, MCA.

(1) barbituric acid;
(2) benzoyl chloride;
(3) boron tribromide;
(4) boron triflouride;
(5) bromobenzene (monobromobenzene);
(6) citral;
(7) cyclohexanone;
(8) diethylamine;
(9) ethyl malonate (diethyl malonate);
(10) dimethylformamide;
(11) dimethylsulfoxide;
(12) ergonovine;
(13) ergotamine;
(14) ethanolamine (monoethanolamine);
(15) formamide;
(16) formic acid;
(17) furan;
(18) gallic acid (3,4,5-trihydroxybenzoic acid);
(19) glyoxylic acid (formylformic acid);
(20) hydroxylamine;
(21) indole;
(22) isosaffrole;
(23) lithium aluminum hydride (aluminum lithium hydride);
(24) lysergic acid, or other ergot alkaloids which can be used to produce lysergic acid;
(25) malonic acid (propanedioic acid);
(26) methylamine;

(27) nitroethane;
(28) nitromethane;
(29) olivitol;
(30) oxalyl chloride;
(31) phenylacetic acid;
(32) phenyl-2-propanone (phenylacetone);
(33) phosphorous oxychloride;
(34) piperidine;
(35) piperonal;
(36) sulfanilamide;
(37) thiourea;
(38) trifluoracetic anhydride;
(39) 1,3,5-trimethoxybenzoic acid;
(40) tyrosine; and
(41) any salt, optical isomer, salt of an optical isomer, or preparation that is chemically equivalent to any of the chemicals listed above.

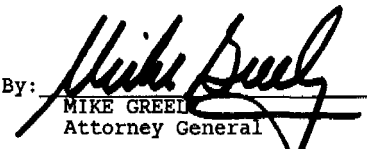
3. The rule is proposed to complete the list established by the legislature in section 50-32-401(1) MCA of those chemicals that can be readily used to produce dangerous drugs.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Assistant Attorney General Marc Racicot, 303 Roberts, Room 371, Helena, Montana 59601, no later than April 14, 1980.

5. If a person who is directly affected by the proposed rule wishes to express data, views and arguments orally or in writing at a public hearing, the affected person must make written request for a hearing and submit this request along with any written comments to Assistant Attorney General Marc Racicot, 303 Roberts, Room 371, Helena, Montana 59601, no later than April 14, 1980.

6. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be two persons based on the fourteen chemical wholesalers, retailers, and university chemistry departments in Montana.

7. The authority of the agency to make the proposed amendment is based on section 50-32-401(2) MCA, and the rule implements section 50-32-401(1) MCA.

By: 
MIKE GREELY
Attorney General

Certified to the Secretary of State February 21, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the repeal of Rule 32-2.6BI(10)-S6200 and the adoption of a new rule relating to manufactured milk products.	)))))	NOTICE OF PROPOSED REPEAL OF RULE 32-2.6BI(10)-S6200 AND ADOPTION OF NEW RULE. (Definitions For Manufactured Dairy Products Rules) No Public Hearing Contemplated.

To: ALL INTERESTED PERSONS

1. On April 15, 1980 the Board of Livestock proposes to repeal rule 32-2.6BI(10)-S6200 DEFINITIONS OF TERMS USED and adopt a new rule for definitions of terms used in the subchapter on manufactured dairy products.

2. The rule to be repealed is found on page 32-145, Administrative Rules of Montana. The rule to be adopted is as follows: **RULE I**

DEFINITIONS: "In this chapter (1) "Acceptable Milk" means milk that qualifies under section 32-26BI(10)-S6210 as to sight and odor that is classified number 1 or number 2 for sediment content and number 1 or number 2 for bacterial estimate. (2) "Probational Milk" means milk classified number 3 for sediment content or milk classified "undergrade" for bacterial estimate that may be accepted by plants for specific time periods. (3) "Reject Milk" means milk that does not qualify under sight and odor, or that is classified number 4 for sediment content which is rejected by the plant. (4) "Excluded Milk" means all of a producer's milk excluded from the market. (5) "3-A sanitary standards" means the standards for dairy equipment formulated by the 3-A sanitary standards committees representing the international association of milk, food and environmental sanitarians, U.S. public health service and dairy industry committee, published by the international association of milk, food and environmental sanitarians. (6) In addition to the above definitions, the definitions contained in section 81-22-101 MCA apply to this chapter.

3. The rule is proposed to be repealed and replaced by the new rule because the old rule contains 4 pages of definitions that are already set forth in section 81-22-101 MCA and therefore unnessarily repeat statutory language..

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal and adoption in writing to Everett Tudor, Chief, Milk and Egg Bureau , Department of Livestock, Capitol Station, Helena, Montana no later than April 15, 1980.

5. If a person is directly affected by the proposed repeal and adoption wishes to express his data, views, and arguments orally or in writing at a public hearing he must

make written request for a hearing and submit this request along with any written comments he has to Mr. Tudor by April 15, 1980.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every livestock producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed repeal and adoption is based on sections 81-2-102 and 81-22-102 MCA. The same sections are being implemented by these proposals.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: JAMES W. GLOSSER, D.V.M.
Administrator and State Veterinarian

Certified to the Secretary of State March 4, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the repeal of Rule 32-2.6B(1)-S600 relating to dairy and egg rules	NOTICE OF PROPOSED REPEAL OF RULE 32-2.6B(1)-S600 (Milk and Egg Rules) NO PUBLIC HEARING CONTEMPLATED

To: ALL INTERESTED PERSONS

1. On April 15, 1980 the Board of Livestock proposes to repeal ARM 32-2.6B-S600, RULES ASSIGNED TO SECTIONS, relating to dairy and egg rules..

2. The rule to be repealed is found on page 32-115 Administrative Rules of Montana

3. The rule is proposed to be repealed because after review during the recodification process it has been determined that the rule is no longer necessary as it is without substantive or procedural value.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Everett Tudor, Bureau Chief, Milk and Egg Bureau , Department of Livestock, Capitol Station, Helena, Montana no later than April 15, 1980.

5. If a person is directly affected by the proposed repeal wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Mr. Tudor at the above address by April 15, 1980.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every dairy producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed 81-2-102 MCA, and implements the same section.

Robert G. Barthelmess
ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: James W. Glosser
JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State March 4, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment) Rule 32-2.2(1)-P200 relating) to the Attorney General's model) procedural rules)	NOTICE OF PROPOSED AMENDMENT OF RULE 32-2.2(1)-P200 (Model Procedural Rules) NO PUBLIC HEARING COMTEMPLATED

To: ALL INTERESTED PERSONS

1. On April 15, 1980 the Board of Livestock proposes to amend rule 32-2.2(1)-P200 MODEL PROCEDURAL RULES.

2. The rule as proposed to be amended reads as follows:

32-2.2(1)-P200 MODEL PROCEDURAL RULES (1) The department of livestock hereby adopts the Attorney General's model procedural rules as contained in Title 1, Administrative Rules of Montana, and as they may from time to time be amended.

3. The rule is proposed to be amended to reflect changes in the Attorney General's model since the adoption of this rule.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Charles Brown, Staff Attorney , Department of Livestock, Capitol Station, Helena, Montana no later than April 15, 1980.

5. If a person is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Mr. Brown.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every livestock producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed 2-4-201 MCA and implements that same section.

Robert G. Barthelmess
ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: James W. Glosser
JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State March 4, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the repeal of sections 32-2.2(2)-P210 through P-260 and 32-2.2(2)-SP280 through P290, pertaining to the implementation of the Montana Environmental Policy Act (MEPA), and the adoption of new rules implementing MEPA.	NOTICE OF PROPOSED REPEAL ARM SECTIONS 32.2.2(2)-P210 through P-260 and 32.2.2(2)-SP280 through P290 AND THE ADOPTION OF PROPOSED NEW RULES. (Environmental Policy Act Rules) NO PUBLIC HEARING CONTEMPLATED

To: ALL INTERESTED PERSONS

1. On April 15, 1980 the Board of Livestock proposes to repeal rules 32-2.2(2)-P210, POLICY STATEMENT CONCERNING MEPA RULES, 32-2.2(2)-P220 DEFINITION OF MEPA TERMS, 32-2.2(2)-P230 DETERMINATION OF NECESSITY FOR ENVIRONMENTAL IMPACT STATEMENT, 32-2.2(2)-P240 PREPARATION OF PRELIMINARY ENVIRONMENTAL REVIEW, 32-2.2(2)-P250 PREPARATION, CONTENT, AND DISTRIBUTION OF ENVIRONMENTAL IMPACT STATEMENTS, 32-2.2(2)-P260 SPECIAL RULES APPLICABLE TO CERTAIN MEPA SITUATIONS, 32-2.2(2)-P280 PREPARATION, CONTENT AND DISTRIBUTION OF A PROGRAMMATIC REVIEW, 32-2.2(2)-P290 RETROACTIVE APPLICATION OF MEPA RULE -- WHERE PROHIBITED.

2. The rule to be repealed are found beginning on page 32-10 Administrative Rules of Montana. The rules proposed for adoption may be found beginning at page 88 of the 1980 Montana Administrative Registar, Issue No. 1. The only change proposed from the reference just given is that the word "department" in rule II will be defined to mean "department of livestock."

3. Interested parties may submit their data, views, or arguments concerning the proposed repeal and adoption in writing to James W. Glosser, D.V.M. , Department of Livestock, Capitol Station, Helena, Montana no later than April 15, 1980.

4. If a person is directly affected by the proposed repeal and adoption wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to James W. Glosser, D.V.M..

5. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every livestock producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having

not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

6. The authority of the agency to make the proposed changes is 2-4-201 MCA, IMP 75-1-201.

Robert G. Barthelmess
ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: Les Graham
LES GRAHAM, Administrator
Brands-Enforeement Division

Certified to the Secretary of State March 4, 1980.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed Adoption of Rules Implementing Minimum Rate Case Filing Standards for Municipal Water and Sewer Utilities.	NOTICE OF PUBLIC HEARING ON NEW RULES IMPLEMENTING MINIMUM RATE CASE FILING STANDARDS FOR MUNICIPAL WATER AND SEWER UTILITIES.

TO: All Interested Persons

1. On April 16, 1980 in the Conference Room of the Montana Public Service Comission at 1227 11th Avenue, Helena, Montana, at 10:00 a.m., a public hearing will be held to consider the adoption of proposed rules implementing minimum rate case filing standards for municipal water and sewer utilities.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

Rule I. APPLICATIONS FOR RATE INCREASES (1) Any application for a rate increase filed by a municipal water and/or sewer utility must include the materials specified in Rules III-XI. These materials must be filed in one or the other of the forms specified in Rule II. Additional materials may be supplied by the utility if it feels that such materials are necessary. These rules do not limit discovery procedures set forth in the Procedural Rules of the Montana Public Service Commission.

(2) As an exception to the Commission's Rules of Practice and Procedure (ARM 38-2.2(14)-P2170), when making an application for a municipal water or sewer utility rate increase, all cities of the first class (as defined in Section 7-4-405, MCA) must file with the Commission an original and six copies of all materials required in these rules, all smaller cities and towns must file an original and three copies of those materials. In addition, all cities must send the Montana Consumer Counsel, 34 West Sixth Avenue, Helena, two copies of those materials.

(3) All or any part of these rules may be waived by a quorum of the Commission upon a showing of good cause. Waiver of any requirements, however, shall not preclude the Commission from requiring the filing of specific material to support the application.

Rule II. TWO TYPES OF FILINGS (1) These rules are designed to provide procedures for two types of filings:

(a) Filings for rates to be set based on actual test year results adjusted for known and measurable changes, inflation, and other projections such as system growth, etc.;

(b) Filings for rates to be set based on actual test year results adjusted for known and measurable changes and inflation only.

(2) Filings of the first type shall comply with all aspects of these rules. Filings of the second type shall comply fully with Rules III, IV, V, VI, VII, XI, XII, and XIII; but need only provide figures for the actual current and one projected year in the accounts and sub-accounts of Rules VIII,

IX and X.

Rule III. LETTER OF TRANSMITTAL (1) The letter of a municipal water or sewer utility transmitting a new rate schedule to the Commission to change the provisions of a rate schedule already on file, must:

(a) List the documents submitted with the filing;

(b) State the names and addresses of those to whom copies of the rate schedule have been mailed;

(c) Include a brief description of the proposed changes in service or rate and charge;

(d) Include a brief statement of the reasons for the proposed changes;

(e) Name an employee of the utility who shall be responsible for answering questions or responding to inquiries concerning the application.

Rule IV. UTILITY-RELATED ORDINANCES (1) Any application for a rate increase filed by a municipal water or sewer utility must include copies of all ordinances passed by the municipality to govern the operations, practices, or service of the utility.

Rule V. PETITION AND PROPOSED TARIFFS (1) Any application for a rate increase filed by a municipal water or sewer utility must include a Petition; this petition must contain:

(a) A statement giving the name of the applicant municipal corporation and the name of the public utility which it operates.

(b) A statement that the applicant municipality currently operates under a schedule of rates and charges on file with the Commission, and that the applicant proposes to amend its schedule of rates and charges in accordance with proposed tariffs.

(c) A request that the proposed tariffs of rates and charges be approved following all legally required procedures.

(2) The proposed tariffs of rates and charges referred to in subsections (1)(b) and (1)(c) of this rule must be on the Public Service Commission Form 8, must be signed by the mayor -- or designated official -- of the municipality applying for such a change in rates, and must accompany the petition.

Rule VI. RESOLUTION (1) Any application for a rate increase filed by a municipal water or sewer utility must include a copy of the resolution of the City or Town Council authorizing the application for the rate increase. This resolution must be signed by the Mayor and attested by the City Clerk.

RULE VII. NARRATIVE, COMPARISON OF RATES, NUMBER OF CUSTOMERS AFFECTED, AND ANTICIPATED ADDITIONAL REVENUE (1) Any application for a rate increase filed by a municipal water or sewer utility must include:

(a) A narrative detailing the reasons for the rate change;

(b) A billing comparison of the present rates and the

proposed rates for similar services;

(c) A statement of the estimated number of customers to be affected; and

(d) A statement of the total additional annual revenues that are anticipated.

Rule VIII. COMPARISON OF REVENUES AND EXPENSES (1) Any application for a rate increase filed by a municipal water utility shall include schedules of the following revenue, expense and miscellaneous accounts:

Water Revenues
- Metered Water Sales
- Unmetered Water Sales
- Bulk & Irrigation Water Sales
- Sales of Water Material & Supplies
- Water Permits
- Water Installation Charges
- Miscellaneous Water Revenue
- Sub-total -

Water Expenses
- Administration
- Facilities
- Source of Supply & Plumbing
- Purification & Treatment
- Transmission & Distribution
- Engineering
- Customer Accounting & Collection
- Miscellaneous Water Expenses
- Sub-total -

Operating Income

Payments
- Principal (Bond)
- Interest (Bond)
- Other (Specify)

Reserves
- Reserve for Revenue Bond Debt Service
- Reserve for Revenue Bond Retirement
- Reserve for Revenue Bond Contingency
- Reserve for Replacement & Depreciation
- Other Reserves (Specify)

Water Fund Balance
1.
2.
3.
4.

Deposits
- Bank

Other
Interest from Deposits

Debt
Bonds Payable
Unamortized Premiums on Bonds Sold
Advance From _____ Fund
Notes Payable
Warrants Payable

Annual Capital Outlays

These schedules shall be prepared for the four previous, the actual current, and two projected years.

(2) Any application for rate increase filed by a municipal sewer utility must include schedules of the following revenue, expense, and miscellaneous accounts:

Sewer Revenues
Sewer Service Charges
Sewer Installation Charges
Sewer Permits
Treatment Facilities Fees
Sales of Sewer Materials and Supplies
Equipment Rental and Miscallaneous Revenue
Sub-total -

Sewer Expenses
Administration
Facilities
Collection & Transmission
Treatment & Disposal
Laboratory & Testing
Engineering
Customer Accounting & Collection
Miscellaneous Sewer Expenses

Operating Income

Payments
Principal (Bond)
Interest (Bond)
Other (Specify)

Reserves
Reserve for Revenue Bond Debt Service
Reserve for Revenue Bond Retirement
Reserve for Revenue Bond Contingency
Reserve for Replacement & Depreciation
Other Reserves (Specify)

Sewer Fund Balance
1.
2.

3.
4.

Deposits
Bank
Other
Interest From Deposits

Debt
Bonds Payable
Unamortized Premiums on Bonds Sold
Advance From _____ Fund
Notes Payable
Warrants Payable

Annual Capital Outlays
These schedules shall be prepared for four previous, the actual current, and two projected years.

Rule IX. SCHEDULES OF REVENUES BY CLASS (1) Any application for a rate increase filed by a municipal water utility shall include schedules showing the contributions of the Residential, Commercial, Industrial, Public Authority, and Other Classes to the following accounts:

Water Revenues
Metered Water Sales
Unmetered Water Sales
Bulk & Irrigatin
Sales of Water Material & Supplies
Water Permits
Water Installation Charge
Miscellaneous Water Revenues

These schedules shall be prepared for four previous, the actual current, and two projected years.

(2) Any application for a rate increase filed by a municipal sewer utility shall include schedules showing the contributions of the Residential, Commercial, Industrial, and Other Classes to Sewer Revenues.

Rule X. SCHEDULES OF NUMBERS OF CUSTOMERS (1) Any application for a rate increase filed by a municipal water or sewer utility shall include schedules showing the following:

Number of Customers - year end
Metered
Residential
Commercial
Industrial
Public Authorities
Other (Specify)

Unmetered
Residential
Commercial
Industrial

Public Authorities
Other (Specify)

These schedules shall be prepared for four previous, the actual current, and two proposed years.

Rule XI. WATER STATISTICS (1) Any application for a rate increase filed by a municipal water utility must include the following:

Water Statistics
Total Amount of Water
Pumped & Collected/yr
Purchased/yr
Maximum Pumped & Collected/day
Purchased/day
Passed Through Meters/yr
Percent of Consumption Metered

These statistics must be prepared for four previous, the actual current, and two projected years.

RULE XII. ATTESTATION. (1) Any application for a rate increase filed by a municipal water or sewer utility must include the sworn affadavit(s) of the responsible parties stating that the information supplied in compliance with rules VI-X is a true and accurate compilation of information contained in the books and records of the utility.

Rule XIII. WORKING PAPERS (1) Any municipal water or sewer utility filing a rate increase is responsible for preparing and maintaining work papers supporting the filing. These papers shall be made available to any party requesting them. If the utility fails to answer any such request promptly, the Commission may issue such order as is reasonable under the circumstances.

4. The Commission proposes to adopt minimum filing standards for municipal utility rate cases: 1) To provide all municipalities with an easily accessible set of standards to be used in assembling material for a rate increase application; 2) To provide the Commission with more uniform information in municipal utility rate cases; and 3) To move toward a type of rate-making that takes account of the particular problems of municipal sewer and water utilities.

5. Interested parties may submit their data, views, or arguments concerning the proposed rules at the hearing or in writing to Rob Smith, Staff Attorney, Montana Public Service Commission, 1227 11th Avenue, Helena, Montana 59601, no later than April 16, 1980.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

7. The authority of the Commission to make these rules is based on Section 69-3-103, MCA, IMP Section 69-3-103, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE MARCH 4, 1980.

BEFORE THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING OF THE STATE OF MONTANA

IN THE MATTER of the Proposed Repeal of the Overall Department Rules ARM 40-2.2(1)-P200 through ARM 40-2.2(10)-P2390 and the proposed Adoption of the Attorney General's Model procedural rules 1.3.101 through 1.3.234	NOTICE OF PROPOSED REPEAL OF THE OVERALL DEPARTMENT RULES 40-2.2(1)-P200 through 40-2.2(10)-P2390 and THE PROPOSED ADOPTION OF THE ATTORNEY GENERAL'S MODEL PROCEDURAL RULES 1.3.101 through 1.3.234 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Parties:

1. On April 13, 1980, the Department of Professional and Occupational Licensing proposes to repeal Overall Department Rules ARM 40-2.2(1)-P200 through ARM 40-2.2(10)-P2390 and adopt the attorney general's model procedural rules 1.3.101 through 1.3.234.

2. The rules to be repealed are the department procedural rules, ARM 40-2.2(1)-P200 through ARM 40-2.2(10)-P2390 and are currently located at pages 40-13 through 40-52 Administrative Rules of Montana.

3. The proposed adoption will read as follows:

"40.2.201 PROCEDURAL RULES (1) The Department of Professional and Occupational Licensing adopts the attorney general's model procedural rules, 1.3.101 through 1.3.234 and all subsequent amendments to the model procedural rules, and incorporates herein those rules by reference."

4. The model procedural rules can be found in Title 1, Chapter 3, Administrative Rules of Montana.

5. Under the directive of the Administrative Procedures Act, the Department of Professional and Occupational Licensing adopted and filed rules of procedure with its initial filing in 1972. At that time the department, rather than avail itself of the use of the attorney general's model rules drew up its own set of rules, which remain in existence. The department has determined that because of the number of inconsistencies in said rules, along with provisions which questionably either violate or go beyond requirements of statute, and because of the interest in uniformity throughout this department and with other agencies, the department has proposed to replace the existing rules with the model rules.

6. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption in writing to the Department of Professional and Occupational Licensing, Lalonde Building, Helena, Montana 59601 no later than April 11, 1980.

7. If a person who is directly affected by the proposed repeal and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Department of Professional and Occupational Licensing, Lalonde Building, Helena,

Montana 59601 no later than April 11, 1980.

8. If the department receives requests for a public hearing on the proposed repeal and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal and adoption; from the Administrative Code Committe of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

9. The authority of the department to make the proposed repeal and adoption is based on section 2-4-201 MCA and implements the same.

By: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, March 4, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PHYSICAL THERAPISTS

IN THE MATTER of the Proposed Amendments of ARM 40.40.403 concerning fees and ARM 40.40.404 subsection (1) concerning renewal of licenses.	NOTICE OF PROPOSED AMENDMENT ARM 40.40.403 FEES and 40.40.404 RENEWAL OF LICENSES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 13, 1980, the Board of Physical Therapists proposes to amend ARM 40.40.403 concerning fees and 40.40.404 concerning renewal of licenses.

2. The text of the present rules is published at pages 1244-1245, 1979 Montana Administrative Register, issue number 19 and copies can also be obtained from the Department of Professional and Occupational Licensing.

3. The rules as proposed to be amended, would read as follows (new matter underlined, deleted matter interlined):

"40.40.403 FEES (1) The fees shall be as follows:

(a)	Examination (for each examination taken)	~~$75.00~~	$100.00
(b)	License	$75.00	
(c)	~~Temporary license~~ Application by Reciprocity	~~$25.00~~	$100.00
(d)	Renewal	$25.00	
(e)	Late Renewal	~~$10.00~~	$35.00

(2) All fees are non-refundable.

40.40.404 RENEWAL OF LICENSE (1) As provided by section 37-11-~~309~~ 308 MCA, all licenses must be renewed on or before April 1 of each year. A grace period of 6 months after the renewal deadline will automatically be extended and late renewals will be accepted upon payment of the renewal fee and or the late renewal fee. Any requests for renewal made after the 6 month grace period will be determined on a case by case basis after review by the board.

(2)..... (no change):

4. The rationale for the amendments is that the Administrative Code Committee observed, after the board had adopted ARM 40.40.403 and 40.40.404, that certain of the fees were not consistent with the authorizations therefor in the statute. The board reviewed the Committee's comments and concurs with them. In order to sustain the operations of the board as has been budgeted, certain fees not subject to the Committee's objections would be raised to compensate for revenue lost by deleted fees.

5. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Physical Therapists, Lalonde Building, Helena, Montana 59601 no later than April 11, 1980.

6. If a person who is directly affected by the proposed

amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Physical Therapists, Lalonde Building, Helena, Montana 59601 no later than April 11, 1980.

7. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected by the proposed amendments has been determined to be 19.

8. The authority of the board to make the proposed amendments is based on section 37-11-201 MCA, and implements sections 37-11-307, 307, 308, and 309 MCA.

BOARD OF PHYSICAL THERAPISTS
JOE LUCKMAN, CHAIRMAN

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, March 4, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF HORSE RACING

IN THE MATTER of the Proposed amendments of ARM 40-3.46(6)-S4660 subsections (1)(v) and (1)(v)(i) concerning definitions; 40-3.46(6)-S4680 subsection (20) concerning number of races; 40-3.46(6)-S4690 Subsections (7)(f) and (8)(a)(ii) concerning racing officials; 40-3.46(6)-S46010 subsection (6)(b) concerning general conduct of racing; 40-3.46(6)-S46030 subsection (14) concerning corrupt practices and penalties; and 40-3.46(6)-S46040 subsections (2)(p), and (8)(d)(iv) concerning pari-mutuel operations.	NOTICE OF PROPOSED AMENDMENTS OF ARM 40-3.46(6)-S4660 DEFINITIONS; ARM 40-3.46(6)-S4680 LICENSES, 40-3.46(6)-S4690 RACING OFFICIALS; 40-3.46(6)-S46010 GENERAL CONDUCT OF RACING; 40-3.46(6)-S46030 CORRUPT PRACTICES AND PENALTIES; 40-3.46(6)-S46040 PARI-MUTUEL OPERATIONS NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

The notice of proposed board action published in the Montana Administrative Register on January 31, 1980 is amended because the Board of Horse Racing received a request from more than the required number of persons for a public hearing.

1. On Friday, April 4, 1980 at 10:00 a.m., a public hearing will be held in the Old Highway Department Auditorium, Fifth and Roberts, Helena, Montana to consider the amendments in the above entitled matter.

2. The original notice can be found at pages 381 through 385 of the Montana Administrative Register, issue number 2.

3. The rules are proposed for amendments for the reasons stated in the notice.

4. The rules remain the same as originally noticed with the following exception to paragraph number 7 of that notice, which is now proposed for amendment as follows: (new matter underlined, deleted matter interlined)

"40-3.46(6)-S46010 GENERAL CONDUCT OF RACING.....

(6)....

(b) Licensees shall recognize as Montana bred any horse whose registration papers indicate that such horse was foaled in Montana. In the absence of positive identification of where the horse was foaled appearing on the registration papers, the owner must file with the Board satisfactory written evidence showing that the horse was foaled in Montana before the horse may be entered in a Montana bred race, or may claim a breeders allowance or a Montana bred weight allowance.

For purposes of further encouraging the breeding within the state of valuable purebred registered horses and to increase the market value and saleability

of said horses, at least 50 percent of all ~~every~~ maiden races ~~written~~ run each day at every Montana pari-mutuel race ~~tracks~~ meets shall be written with Montana bred maidens preferred.

....."

5. The board or its designee will preside over and conduct the hearing.

6. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Horse Racing, Lalonde Building, Helena, Montana, 59601, no later than April 10, 1980.

7. The authority of the board to make the proposed amendments is based on section 23-4-202 MCA. The implementing sections are those stated in the original notice.

BOARD OF HORSE RACING
JOSEPH MURPHY, CHAIRMAN

BY: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, March 4, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PHARMACISTS

IN THE MATTER of the Proposed) Amendment of ARM 40-3.78(6)-) S78065 fee schedule.)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.78(6)-S78065 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Parties:

1. On April 13, 1980, the Board of Pharmacists proposes to amendment ARM 40-3.78(6)-S78065 subsection (6) concerning examination fees.

2. The proposed amendment changes the examination fee and will read as follows (new matter underlined, deleted matter interlined):

"40-3.78(6)-S78065 FEE SCHEDULE (1)....

(6) Examination fee ~~$35.00~~ $45.00

....."

3. The board is proposing the increase because the cost to the board for the NABPLEX examination has been raised $10.00 by the Educational Testing Service/National Association of Board of Pharmacy, thereby making it necessary to raise the examination fee $10.00.

4. Intesested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Pharmacists, Lalonde Building, Helena, Montana 59601 no later than April 11, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Pharmacists, Lalonde Building, Helena, Montana 59601 no later than April 11, 1980.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected by the proposed amendment has been determined to be 2 based on the 20 applicants per year.

7. The authority of the board to make the propsed amendment is based on section 37-7-201(2)(g) MCA and implements section 37-7-302 (2) MCA.

BOARD OF PHARMACISTS
JAMES R. CARLSON, R.Ph.,PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, March 4, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF REALTY REGULATION

IN THE MATTER of the Proposed Amendment of ARM 40-3.98(6)-S98040 concerning inactive licensees.	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.98(6)-S98040 RENEWAL - INACTIVE LIST - REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 13, 1980, the Board of Realty Regulation proposes to amendment ARM 40-3.98(6)-S98040 concerning inactive licensees.

2. The proposed amendment to 40-3.98(6)-S98040 will add a new subsection (d) to subsection (1) of the rule and will as follows: (new matter underlined)

"40-3.98(6)-S98040 RENEWAL - INACTIVE LIST - REGISTER

(1) ...

(d) A real estate licensee who has caused his real estate license to be placed on inactive status with the board has the sole responsibility to keep the board informed as to any change of his residency or mailing address during the period of time the real estate licensee remains on inactive status.

....."

3. The board is proposing the amendment because a licensee whose real estate license is placed on inactive status is no longer associated with a real estate broker, therefore the only address the board has available by which to contact this licensee is the last known address in the files. From time to time, it is imperative that the licensee is contacted by the board, such as annual license renewal time, or a change in a rule or statute that might affect such class of licensee. Many times the board is unable to locate inactive licensees due to changes of address made with no notification to the board.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, Lalonde Building, Helena, Montana 59601 no later than April 11, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Realty Regulation, Lalonde Building, Helena, Montana 59601 no later than April 11, 1980.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency;

or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected by the proposed amendment has been determined to be 80.

The authority of the board to make the proposed amendment is based on section 37-51-203 MCA and implements section 37-51-311 (2) MCA.

BOARD OF REALTY REGULATION
DEXTER DELANEY, CHAIRMAN

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, March 4, 1980.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46-2.10(18)-S11460 pertaining to medical assistance, providers of services and the repeal of 46-2.10(18)-S11470 pertaining to medical assistance, peer review, utilization review and medical review and the adoption of rules pertaining to medical assistance, provider requirements	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11460 AND THE REPEAL OF 46-2.10(18)-S11470 AND THE ADOPTION OF RULES ALL OF PERTAINING TO MEDICAL ASSISTANCE

TO: All Interested Persons

1. On April 2, 1980, at 9:00 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, MT 59601, to consider the amendment of Rule 46-2.10(18)-S11460 pertaining to medical assistance, providers of services and the repeal of 46-2.10 (18)-S11470 pertaining to medical assistance, peer review, utilization review and medical review and the adoption of rules pertaining to medical assistance, provider requirements.

2. The rule proposed to be repealed can be found on page 46-94.8A of the Administrative Rules of Montana.

3. The rule as proposed to be amended provides as follows:

46-2.10(18)-S11460 MEDICAL ASSISTANCE, PROVIDERS OF SERVICES (1) The following requirements shall be obtained in dealing with providers of services:

(a) Methods to be used in establishing payment rates for each item of care services included in the medical assistance program are:

(i) Optometry, based on unit value fee schedule developed by optometric association. ~~(1967)~~

~~(ii) Other services. Customary charges that are reasonable and/or reasonable cost will apply for all other services. Reimbursement for services cannot exceed the lesser or reasonable cost determined under Medicare, or the customary charges to the general public. Where such services are furnished by public providers free of charge or at a nominal fee, reimbursement is based on those items included in the reasonable cost determination which would result in fair competition. The Department recognizes as reasonable for medical reimbursement purposes only, those charges which fall within the 75th percentile of all charges for a similar service in an area during the last calendar year elapsing prior to the start of the fiscal year in which the bill is submitted. With respect to reasonable charges for medical~~

~~supplies and equipment, recognized charges may not exceed the lowest charge at which supplies and equipment are widely and consistently available.~~

(b) Facilities which participate in both medicare and medicaid will be certified by the secretary of HEW based principally on a survey evaluation by the Montana state department of health and environmental sciences.

~~(c) Payments under Medicaid shall not be made to anyone other than the physician or other person who provided the service unless the person is required as a condition of his employment to turn his fees over to his employer.~~

~~(d) It is required that all practitioners who participate in the medical assistance program must be licensed, certified or otherwise qualified to perform such services.~~

~~(e)~~ (c) No nursing home within the state may operate except under the supervision of a licensed administrator and the facility must be licensed by the Montana department of health.

~~(f) The Economic Assistance Division reserves the right to exclude, from participation in the program, any provider who in the judgment of the Division has been guilty of misusing or abusing the program or who for any other reason has been determined unsuitable to participate.~~

~~(2) The following additional requirements shall be observed in connection with the submission of claims by providers of services.~~

~~(a) Claims must be submitted within 180 days of the date service was performed or within 180 days after eligibility is determined, whichever last occurs. For providers of hospital services, the service shall be deemed to have been performed upon recipient's discharge from one continuous confinement. The Medical Assistance Bureau shall pay all valid and proper claims submitted by providers for services to eligible persons within 30 days after receipt of said claim. In the event the Bureau contends that a claim is not valid or proper, it must inform the provider of the details of such contention within 30 days after receipt of the claim.~~

~~(b) In the event that a provider of services is entitled to retroactive readjustments on payments of services rendered, required by law and/or these regulations, the provider shall submit a claim within 180 days of the notification of said readjustment.~~

~~(c) Where a third party may be liable for the payment of all or part of the medical services rendered by providers of services, the Medical Assistance Bureau may withhold payment of the claim for a period not to exceed 180 days from the receipt of said claim unless the recipient shall agree in writing on a form satisfactory to the Medical Assistance~~

~~Bureau that the Bureau is subrogated (1) to all recipient's rights, if any, of recovery against any person or organization responsible for injuries suffered by the recipient and, (2) to all recipient's rights of recovery, if any, for such injury under the terms of any existing insurance agreement or workmen's compensation plan and thereupon, the Medical Assistance Bureau shall pay the provider of the services within the time provided in subparagraph (2) (a). In the event of such subrogation, the provider shall assist the recipient, to the extent provider has a legal right to do so, in submitting the claim to the third party who may be liable, and shall do so within 90 days of the date of such subrogation.~~

4. The authority of the agency to make the proposed amendment is based on section 53-6-113 MCA, and the rule implements section 53-6-101, 53-6-113, and 53-6-141 MCA.

5. The proposed rules provide as follows:

RULE I PROVIDER PARTICIPATION As a condition of participation in the Montana medicaid program all providers of service shall abide by all applicable state and federal statutes and regulations, including but not limited to federal regulations and statutes found in Title 42 of the Code of Federal Regulations and the United States Code governing the medicaid program, and all pertinent Montana statutes and rules governing licensure and certification.

6. The authority of the agency to make the proposed rule is based on section 53-6-113 MCA, and the rule implements section 53-6-101 and 53-6-113 MCA.

RULE II CONTRACTS (1) Providers shall enter into a written contract with the department delineating the services to be provided and reimbursement to be paid for duration, and referral. Natural persons who are providers need not enter such a contract.

(a) Providers under written contract may not obtain reimbursement for services which are not reimbursable to providers who are natural persons unless the services are unique to the specific provider. Reimbursement for these unique services shall be in accordance with the rules of the department.

(b) Providers under written contract shall not receive higher reimbursement rates for similar services than the rates allowed by the Montana medicaid program to providers, who are natural persons.

(c) Waivers of this written contract requirement may be granted to specific type providers at the discretion of the department if the provision of services and reimbursement

rates for such services are governed specifically by the rules of the department.

(2) Providers, whose services are covered by the Title XVIII program (medicare), shall meet the certification standards of medicare.

(3) Providers shall render services to an eligible medicaid recipient in the same scope, quality, duration and method of delivery as to the general public, unless specifically limited by these regulations.

(4) Providers shall not discriminate in the provision of service to eligible Medicaid recipients on the grounds of race, creed, color, sex, national origin, or handicap. Providers shall comply with the department of health, education, and welfare regulations under Title VI and Title IX of the Civil Rights Acts, Public Law 93-112 (sections 504 and 505) and 49-1-101, 102 MCA; 49-2-101, 102 MCA; 49-2-202 MCA; 49-2-301 through 49-2-308 MCA; 49-2-401 through 49-2-404 MCA; 49-2-501 through 49-2-505 MCA; 49-2-601 MCA, as amended and all requirements imposed by or pursuant to the regulations implementing the statutes.

7. The authority of the agency to make the proposed rule is based on section 53-6-113 MCA, and the rule implements sections 53-6-101, 53-6-105, 53-6-113, 53-6-115 and 53-6-141 MCA.

RULE III BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) Providers shall submit claims within 180 days of the date the service was performed, within 180 days after the applicants eligiblity is determined, or within 180 days after a written notice from a third party resource, whichever occurs last. For providers of hospital services, the service shall be deemed to have been performed upon the recipient's discharge from one continuous confinement.

(a) All claims to the Montana medicaid program are to be submitted on personally signed state approved billing forms, or they shall not be considered valid and proper claims.

(2) The program shall pay 90 per cent of all valid and proper claims within 30 days after receipt of said claim. Should the bureau contend that a claim is not valid or proper, the bureau shall inform the provider of the details of such contention within 30 days after receipt of the claim.

(a) The program shall pay 99 per cent of all valid and proper claims within 90 days of receipt of such claims.

(b) The program shall make payment on all claims within 180 days of the receipt of the claim unless it determines payment to be improper under this chapter or applicable federal regulations.

(c) The department shall be entitled to promptly (within 60 days) recover all payments erroneously or improperly

made to a provider. At the option of the provider, refunds shall be accomplished either by mailing a check made out to "State Department of Social and Rehabilitation Services" directly to that department at Box 4210, Helena, MT 59601, or by notifying the department in writing of the receipt and the amount of payment over and above the amount reimbursable by the Montana medicaid program, which amount shall then be automatically deducted from future payments to the provider. Regardless of the method of repayment chosen, the provider shall identify on the check or notifying document the patient, by name and claim number, who received services for which the over payment was made and specify the dates of services for which over payments were received.

(3) Unless stated elsewhere, payments made by the Montana medicaid program shall not exceed the lower of the amount payable for like services in the same locality by the medicare program (Title XVIII of the Social Security Act), or the provider's usual and customary charges that are reasonable.

(4) Providers are required to accept, as payment in full, the amount paid by the Montana medicaid program for a service provided to an eligible medicaid recipient in accordance with the rules of the department. Providers shall not seek any payment in addition to or in lieu of the amount paid by the Montana medicaid program from a recipient or his representative.

(5) In the event that a provider of services is entitled to a retroactive increase of payment for services rendered, the provider shall submit a claim within 180 days of the notification of the retroactive increase or the provider forfeits any rights to the retroactive increase.

(6) The Montana medicaid program shall make payments directly to the individual provider of service unless the individual provider is required, as a condition of his employment, to turn his fees over to his employer.

(a) Exceptions to the above requirement may, at the discretion of the department, be made for transportation and/or per diem costs incurred to enable a recipient to obtain medically appropriate services.

(7) The method of determining payment rates for out-of-state providers will be the same as for in-state providers except as otherwise provided in the rules of the department.

8. The authority of the agency to make the proposed rule is based on section 53-6-113 MCA, and the rule implements sections 53-6-101, 53-6-113 and 53-6-141 MCA.

RULE IV THIRD PARTY LIABILITY (1) The department is subrogated to the recipient's right to third party recoveries to the extent necessary to reimburse the department for services provided by the Montana medicaid program, when the

third party's liability is established after assistance is granted, and in any other case in which the liability of the third party exists, but was not treated as a current source of payment.

(2) Before payments can be made to providers, all other indentifiable sources of payment must be exhausted by recipients and/or providers, as follows:

(a) For known medicaid-eligible individuals, the provider shall use its usual and customary procedures for inquiring about sources of payment for non-Medicaid patients. This inquiry includes ascertaining the identity of any potentially liable tortfeasor only if such identity may be learned using the provider's usual and customary inquiry procedures.

(b) Prior to billing the Montana medicaid program for services rendered to a medicaid-eligible individual, the provider shall bill any other source of payment identified by means of the provider's usual and customary inquiry procedures, and which has been properly assigned by the individual to the provider if the provider requires assignment, except that the provider is not required to bill or to pursue in any way any potentially liable tortfeasor. The provider shall not be required to send to an identified source of payment more than one billing statement.

(c) For bills for which no source of payment is identified other than a potentially liable tortfeasor and the Montana medicaid program, the provider shall bill the Montana medicaid program indicating that services were rendered as the result of a possible tortious act, and, if known, the identity of the tortfeasor.

(d) If the provider receives no payment or notice of rejection from the liable third party within 45 days of the date of billing, it may bill the Montana medicaid program noting the lack of timely response. Medicaid will make payment for services rendered to the medicaid-eligible individual in all cases within 180 days of the date of receipt of the bill.

(e) If the provider receives partial payment or notice of rejection of the claim within 45 days, it may bill the Montana medicaid program noting the rejection or the amount of credit. The Montana medicaid program will make payment of the balance due for services rendered to medicaid-eligible individuals up to the maximum allowed by the rules of the department as soon as the normal course of business allows, and in all cases within 180 days of receipt of the bill.

(3) In the event the provider receives payments from the Montana medicaid program and one or more third-party sources, any amount received over and above the amount reimbursed by the Montana medicaid program shall be promptly (within 60 days) refunded by the provider to the Montana medicaid program. At the option of the provider, refunds shall be accomplished either by mailing a check made out to

"State Department of Social and Rehabilitation Services" directly to that department at Box 4210, Helena, MT 59601, or by notifying the department in writing of the receipt and the amount of payment over and above the amount reimbursed by the Montana medicaid program, which amount shall then be automatically deducted from future payments to the provider. Regardless of the method of repayment chosen, the provider shall identify on the check or notifying document, the patient, by name and claim number, who received services for which the double payment was made and specify the dates of services for which double payments were received.

(4) In the event a provider delivers to a known medicaid recipient a copy of a billing statement for services for which payment has been received or is being sought from the Montana medicaid program, the provider must clearly indicate on the recipient's copy that the department is subrogated to the right of the recipient to recover from liable third parties.

(a) The words "Subrogation Notice--Billed to Medicaid," or a similar statement giving clear notice of the department's subrogation rights, indelibly stamped, typed or printed on the statement shall be sufficient to meet the notification requirement of section (3).

(b) If a provider fails to meet the requirements of section (3) the department may withhold or recover from the provider any amount lost to the department as a result of that failure.

(5) Referrals shall be made to the Program Integrity Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601. The program integrity bureau may send referrals to the department of revenue for recovery.

9. The authority of the agency to make the proposed rule is based on section 53-6-113 MCA, and the rule implements sections 53-6-101, 53-6-113, 53-6-141, 53-6-143 and 53-6-144 MCA.

RULE V DETERMINATION OF MEDICAL NECESSITY (1) The department shall only make payment for those services which are medically necessary as determined by the department or by the designated professional review organization designated by the department.

(2) In determining medical necessity the department or designated professional review organization shall consider the type or nature of the service, the provider of the service, and the setting in which the service is provided.

10. The authority of the agency to make the proposed rule is based on section 53-6-113 MCA, and the rule implements sections 53-6-101 and 53-6-141 MCA.

RULE VI PROVIDER RIGHTS (1) Although the department must necessarily limit reimbursable services, the department shall not interfere with a provider's right and responsibility to exercise professional judgment in rendering services.

(2) Providers shall have the right to manage their business affairs as they deem proper within the conditions and limitations imposed by these rules.

(3) A provider shall have the right to appeal any administrative decision which directly affects the rights or entitlements of the provider.

(4) A provider shall have the right to appeal on behalf of an applicant or recipient an administrative decision affecting the applicant's or recipient's rights or entitlements under the program.

(a) Notwithstanding subsection (4), nursing home care providers shall not have the right to appeal a denial of benefits to an applicant or recipient which was based upon the service provided not being medically necessary.

11. The authority of the agency to make the proposed rule is based on section 53-6-113 MCA, and the rule implements sections 53-6-101 and 53-6-141 MCA.

RULE VII MAINTENTANCE OF RECORDS AND AUDITING (1) All providers of service shall maintain records which fully disclose the extent and nature of the services provided to individuals receiving assistance under the Montana medicaid program, and which support the fee charged or payment sought for such services. These records shall be retained for a period of at least three years from the date on which the service was rendered.

(a) In maintaining financial records, providers shall employ generally accepted accounting methods. Generally accepted accounting methods are those approved by the national association of certified public accountants.

(b) The department shall have access to all medicaid recipient records so maintained and retained regardless of a provider's continued participation in the program.

(c) In the event of a change of ownership, the original owner must retain all required records unless an alternative method of providing for the retention of records has been established in writing and approved by the department.

(2) In addition to the recipient's medical records, any medicaid information regarding a recipient or applicant is confidential and shall be used solely for purposes related to the administration of the Montana medicaid program. This information shall not be divulged by the provider or his employees, to any person, group, or organization other than a department representative without the written consent of the recipient or applicant.

(3) The department, the designated professional review

organization, the legislative auditor, the department of health, education and welfare, the department of revenue, and their legal representatives shall have the right to inspect or evaluate the quality, appropriateness, and timeliness of services performed by providers, and to inspect and audit all records required by this rule.

(a) Refusal to permit such inspection, evaluation or audit shall result in the imposition of provider sanctions in accordance with the rules of the department.

12. The authority of the agency to make the proposed rule is based on section 53-6-113 MCA, and the rule implements sections 53-6-101, 53-6-111 and 53-6-141 MCA.

13. The proposed amendment, repeal, and adoption of rules are part of the department of social and rehabilitation service's plan to update all medicaid rules to comply with current medicaid practice and to facilitate the department's ongoing recodification process of its rules. The proposal will reorganize the medicaid rules into a more usable format while making more explicit our current practice.

14. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than April 10, 1980.

15. The Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, has been designated to preside over and conduct the hearing.

Keith T. Colo

Director, Social and Rehabilitation Services

Certified to the Secretary of State March 4, 1980.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules and the repeal of Rule 46-2.10(18)-S11480 all pertaining to provider sanctions	))))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF EIGHT RULES AND THE REPEAL OF 46-2.10(18)-S11480 PERTAINING TO PROVIDER SANCTIONS

TO: All Interested Persons

1. On April 2, 1980, at 10:30 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, MT 59601, to consider the adoption of eight rules and the repeal of Rule 46-2.10(18)-S11480 all pertaining to provider sanctions.

2. The rule proposed to be repealed can be found on page 46-94.12A of the Administrative Rules of Montana.

3. The rules as proposed to be adopted provide as follows:

RULE I GROUNDS FOR SANCTIONING Sanctions may be imposed by the department against a provider for any one or more of the following reasons:

(1) Presenting or causing to be presented for payment any false or fraudulent claim for services or merchandise.

(2) Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled under the rules of the department.

(3) Submitting or causing to be submitted false information for the purpose of meeting prior authorization requirements.

(4) Failure to maintain and retain records required by the rules of the department.

(5) Failure to disclose or make available required records to the department, its authorized agent or other legally authorized persons, or organizations, or governmental entities.

(6) Failure to provide and maintain quality services to medicaid recipients within accepted medical community standards as adjudged by a body of peers.

(7) Engaging in a course of conduct or performing an act which the department has determined to be improper or abusive of the Montana medicaid program or continuing such conduct following notification that the conduct should cease.

(8) Breach of the terms of the provider contract or failure to comply with the terms of the provider certification on the medicaid claim form or the failure to comply with requirements imposed by the rules of the department.

(9) Over-utilizing the Montana medicaid program by inducing, furnishing, or otherwise causing a recipient to receive services or goods not otherwise required or requested by the recipient.

(10) Rebating or accepting a fee or portion of a fee or charge for a medicaid patient referral.

(11) Violating any provision of the State Medical Assistance Act or any rule promulgated pursuant thereto, or violating any provision of Title XIX of the Social Security Act or any regulation promulgated pursuant thereto.

(12) Submission of a false or fraudulent application for provider status.

(13) Violations of any statutes, regulations or code of ethics governing the conduct of occupations or professions or regulated industries.

(14) Conviction of a criminal offense relating to performance of a provider agreement or contract with the state or for negligent practice resulting in death or injury to patients.

(15) Failure to meet requirments of state or federal law for participation (e.g. licensure).

(16) Exclusion from the medicare program (Title XVIII of the Social Security Act) because of fraudulent or abusive practices.

(17) Charging medicaid recipients for amounts over and above the amounts paid by the department for services rendered.

(18) Refusal to execute a new provider agreement when requested to do so.

(19) Failure to correct deficiencies in provider operations after receiving written notice of these deficiencies from the department, or the department of health and environmental sciences.

(20) Formal reprimand or censure by an association of the provider's peers for unethical practices.

(21) Suspension or termination from participation in another government medical program including but not limited to workman's compensation, crippled children's services, rehabilitation services and medicare.

(22) Criminal indictment for fraudulent billing practices or negligent practice resulting in death or injury to the provider's patients.

(23) Civil judgement for fraudulent billing practices or negligent practice resulting in death or injury to the provider's patients.

(24) Failure to repay or make acceptable arrangements for the repayment of identified overpayments or otherwise erroneous payments.

(25) Threatening, intimidating or harassing patients or their relatives in an attempt to influence reimbursement rates or affect the outcome of disputes between the provider

and the department.

(26) Submitting claims for reimbursement of costs which the provider knows or has reason to know are not reimbursable costs.

RULE II SANCTIONS The following sanctions may be invoked against providers based on the grounds specified in Rule I.

(1) Termination from participation in the medicaid program.

(2) Suspension of participation in the medical assistance program.

(3) Suspension or withholding of payments to a provider.

(4) Referral to peer review for any action deemed necessary by the reviewing body.

(5) Shortening of an existing provider agreement as permitted by the terms of such agreement.

(6) Required attendance at provider education sessions, the cost of which shall not be reimbursed by the medicaid program.

(7) Required prior authorization for provision of services.

(8) One-hundred percent review of the provider's claims prior to payment.

(9) Referral to the appropriate state licensing board for investigation, and/or for any action deemed necessary by the reviewing body.

(10) Referral to the department of revenue for any action deemed necessary.

RULE III FACTORS GOVERNING IMPOSITION OF SANCTION (1) The decision to impose sanctions and which sanctions to impose shall be within the discretion of the department except as provided in subsection (3).

(2) The following factors shall be considered in determining the sanction(s) to be imposed:

(a) Seriousness of the offense(s);

(b) extent of violations;

(c) history of prior violations;

(d) prior imposition of sanctions;

(e) prior provision of provider education;

(f) provider willingness to comply with program rules;

(g) whether a lesser sanction will be sufficient to remedy the problem;

(h) actions taken or recommended by peer review groups or licensing boards.

(3) Where a provider has been found by a court of competent jurisdiction in either a civil or criminal proceeding to have defrauded the Montana medicaid program, or has been previously suspended due to program abuse, or has been

terminated from the medicare program for fraud or abuse, the department shall terminate the provider from the medicaid program.

RULE IV SCOPE OF SANCTION (1) A sanction may be applied to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case by case basis after giving due consideration to all relevant facts and circumstances. The violation, failure, or inadequacy of performance may be imputed to an affiliate where such conduct was accomplished within the course of the affiliate's official duty or was effectuated by the provider with the knowledge or approval of the affiliate.

(2) Suspension or termination from participation of any provider shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the department or its fiscal agents for any services or supplies provided to persons eligible for the Montana medicaid program except for those services or supplies provided prior to the suspension or termination.

(3) No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the department or its fiscal agents for any services or supplies provided by a person within such organization who has been suspended or terminated from participation in the Montana medicaid program except for those services or supplies provided prior to the suspension or termination.

(4) When the provisions of subsection (3) of this rule are violated by a provider of services which is a clinic, group, corporation, the department may suspend or terminate such organization and/or any individual person within said organization who is responsible for such violation.

RULE V NOTICE OF SANCTION (1) When a provider has been sanctioned, the department shall notify the appropriate professional society, board of registration or licensure, and federal or state agencies of the findings made and the sanctions imposed.

(2) Where a provider's participation in the Montana medicaid program has been suspended or terminated, the department shall notify the recipients for whom the provider has submitted claims for services within the previous 6 months that such provider has been suspended or terminated.

RULE VI PROVIDER EDUCATION (1) Except where termination has been imposed, the department may in its discretion direct each provider, who has been sanctioned, to participate in a provider education program as a condition of continued medicaid participation.

(2) Provider education programs may include any of the

following at the discretion of the department:
(a) Instruction in claim form completion;
(b) instruction on the use and format of provider manuals;
(c) instruction on the use of procedure codes;
(d) instruction on statutes and regulations governing the Montana medicaid program;
(e) instruction on reimbursement rates;
(f) instructions on how to inquire about coding or billing problems;
(g) any other matter as determined by the department.

RULE VII NOTICE OF VIOLATION Should the department have information which indicates a provider may have submitted bills and/or has been practicing in a manner inconsistent with program requirements, and/or may have received payment to which he may not be properly entitled, the department shall notify the provider of the discrepancies noted. The notification shall set forth:
(1) The nature of the discrepancies or violations;
(2) the dollar value of such discrepancies or violations, if known;
(3) the method of computing such dollar value, if applicable;
(4) explanation of further actions to be taken or sanctions to be imposed by the department;
(5) explanation of any actions required of the provider;
(6) the provider's right to a formal hearing.

RULE VIII SUSPENSION OR WITHHOLDING OF PAYMENTS PENDING FINAL DETERMINATION (1) Where the department has notified a provider of a violation or an overpayment pursuant to Rule VII, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payments pending a final determination.
(2) Where the department intends to withhold or suspend payments it shall notify the provider in writing and shall include a statement of the provider's right to request formal review of such decision.

4. The rules to be adopted consist of a new section of the Medicaid rules entitled Provider Sanctions. These rules replace the proposed to be repealed Rule 46-2.10(18)-S11480 while expanding on the subject matter of that rule. These rules implement the department's responsibilities under Chapter 276 of the 1979 Session Laws which amended 53-6-111 MCA. This proposed adoption and repeal of rules is part of our effort to reorganize the rules into a more useable format while making more explicit our current practice.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than April 11, 1980.

6. The Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on section 53-6-111 MCA and the rules implement section 53-6-111 MCA.

Keith P. Colo
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 4, 1980.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46-2.10(38)-S102030 pertaining to eligibility, medical resources	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT ON RULE 46-2.10(38)-S102030 PERTAINING TO ELIGIBILITY, MEDICAL RESOURCES

TO: All Interested Persons

1. On April 2, 1980, at 2:00 p.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, MT 59601, to consider the amending of Rule 46-2.10(38)-S102030 which pertains to eligibility, medical resources.

2. The rule as proposed to be amended provides as follows:

(2) County medical assistance shall not be available to cover medical services for individuals who are, or would be, eligible for assistance through Medicaid even when a provider refuses to participate in the Medicaid Program.

3. This amendment is necessary to modify Rule 46-2.10(38)-S102030 to comply with House Bill 692 which modified section 53-3-103 MCA. On January 31, 1980, the Department of Social and Rehabilitation Services published MAR Notice No. 46-2-208 to amend this rule. There was no public hearing scheduled. Since then, the Office of Legal Affairs has received a sufficient amount of requests to warrant a public hearing.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than April 11, 1980.

5. The Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment is based on Section 53-3-103 MCA, and the rule implements Section 53-3-103 MCA.

Keith P. Colby
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 4, 1980.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of rules establishing the forms for letter of intent and application for certificate of need	)))))	NOTICE OF THE ADOPTION OF RULES 16-2.22(7)-S2279 AND 16-2.22(7)-S2280

TO: All Interested Persons

1. On January 31, 1980, the department published notice of a proposed adoption of rules establishing the forms for letters of intent and applications for certificate of need at page 142 of the 1980 Montana Administrative Register, issue number 2.

2. The department has adopted the rules as proposed.

3. No comments or testimony were received.

A. C. KNIGHT, M.D., Director

CERTIFIED TO THE SECRETARY OF STATE March 4, 1980

BEFORE THE DEPARTMENT OF STATE LANDS
AND BOARD OF LAND COMMISSIONERS OF
THE STATE OF MONTANA

In the matter of the repeal of) Rules 26-2.10(10) S10190) through S10350 (Subchapter 10)) and Rules 26-2.10(14)-S10360) and S10370 (Subchapter 14) and) the adoption of New Rule I) through XXXI, pertaining to) control of strip and under-) ground mining and reclamation) of strip and underground mined) land, departmental reclamation) of abandoned coal, uranium,) hard rock, and open cut mined) lands through use of federal) lands, conservation of coal,) designation of lands unsuit-) able for coal mining; and) alternate reclamation of coal) and uranium mined lands	NOTICE OF REPEAL OF ARM 26-2.10(10)-S10190 THROUGH S10350 (SUBCHAPTER 10) AND RULES 26-2.10(14) S10360 AND S10370 (SUBCHAPTER 14) AND ADOPTION OF NEW STRIP AND UNDERGROUND MINE RECLAMATION AND COAL CONSERVATION RULES; ADOPTION OF A METAL MINE RECLAMATION RULE; AND ADOPTION OF AN OPEN CUT MINING RULE

TO: All Interested Persons

1. On January 17, 1980, the Department of State Lands and Board of Land Commissioners published notice of proposed repeal of ARM 26-2.10(10) S10190 through S10350 (Subchapter 10) and Rules 26-2.10(14) S10360 and S10370 (Subchapter 14) and adoption of New Rules I through XXXI.

2. The department and board have repealed ARM 26-2.10(10) S10190 through S10350, which are found on pages 26-48.5 - 48.79, of the Montana Administrative Register, and ARM 26-2.10(14) S10360 and S10370, which are found on pages 26-48.80 - 48.81 of the Montana Administrative Register, and have adopted the new rules with changes as are set forth beginning on the bottom of this page.

3. Comments received during the May 24, 1979 - June 22,1979 comment period have been incorporated as part of the record. No new comments were received during the January 17, 1980 - February 15, 1980 comment period. Summaries of the comments received by the board and department's response to those comments follow the text of the rules, which begin on the bottom of this page.

RULE I DEFINITIONS (1) "Access roads" means those roads leading from a public roadway to the mine complex.

(2) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, and that is discharged from an active, inactive or abandoned strip or underground mining operation or from an area affected by such operations.

(3) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(4) "Act" means the Montana Strip and Underground Mine Reclamation Act (Part 2, Chapter 4, Title 82, MCA).

(5) "Adjacent area" means land located outside the permit area or mine plan area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by strip or underground mining operations.

(6) "Agricultural activities" means, with respect to alluvial valley floors, use of any tract of land for the production of plant or domestic animal life where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

(7) "Agricultural use" means the use of any tract of land for the production of plant or domestic animal life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(8) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and ~~coal~~ refuse piles eliminated. Permanent water impoundments may be permitted where the department determines that they are in compliance with Rule VII.

(9) "Arid and semiarid area" means, in the context of alluvial valley floors, an area experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event will result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with all applicable rules pursuant to the Act.

(12) "Cemetery" means any area of land where human bodies are interred.

(13) "Collateral bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee and which is supported by the deposit with the department of cash, negotiable bonds of the United States, state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the U.S.

(14) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(15) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(16) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, processing waste, underground development waste, or noncoal waste is placed by strip or underground mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance is released.

(17) ~~(16)~~ "Diversion" means a channel, embankment, or

other manmade structure constructed to divert water from one area to another.

(18) ~~(17)~~ "Downslope" means the land surface between the projected outcrop of the lowest coal seam being mined along each highwall and a valley floor.

(19) ~~(18)~~ "Enbankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(20) ~~(19)~~ "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow or ice, and which has a channel bottom that is always above the local water table.

(21) ~~(22)~~ "Essential hydrologic functions" means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

(a) The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.

(b) The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.

(c) (i) The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel flood plain and adjacent low terraces.

(ii) The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifiers which control inflow and outflow.

(d) The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of eath materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation from the natural control of

alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for the growth of agriculturally useful plants.

(22) ~~(21)~~ "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

(23) ~~(22)~~ "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or strip or underground mining operations or both. During such operations it may include emissions from haul roads~~,~~, wind erosion of exposed surfaces, storage piles and spoil piles, reclamation operations and other activities in which material is either removed, stored, transported, or redistributed.

(24) ~~(23)~~ "General area" means, with respect to hydrology, the topographic and ground water basin surrounding a mine plan area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground water systems and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

(25) ~~(24)~~ "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(26) ~~(25)~~ "Haul roads" means those roads leading from the tipple, processing, or mine complex areas onto or through areas that have been mined or are being mined.

(27) ~~(26)~~ "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20½% or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10½%. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(28) ~~(27)~~ "Highwall" means the face of exposed overburden and mineral in an open cut of strip mining operations or for entry to underground mining operations.

(29) ~~(28)~~ "Historically used for cropland" means (1)

lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of strip or underground coal mining operations; or (2) lands that the department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved~~;. or (3) lands that would likely have been used as cropland for any 5 out of the last 10 years immediately preceding such acquisition but for the fact of ownership or control of the land unrelated to the productivity of the land~~.

(30) ~~(29)~~ "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

(31) ~~(30)~~ "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(32) ~~(31)~~ "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(33) ~~(32)~~ "Interim regulatory program" means the departmental program for regulation of strip or underground mining operations pursuant to the Act and the emergency rules (Title 26, Chapter 2, Subchapter 10, ARM) which became effective as emergency rules on March 31, 1978 and as permanent rules on July 27, 1978 and which expired on the ~~date of the Secretary's approval of Montana's permanent regulatory program pursuant to P.L. 95-87~~. effective date of these rules.

(34) ~~(33)~~ "Intermittent stream" means a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(35) ~~(34)~~ "In situ processing means activities conducted on the surface or underground in connection with in-place

distillation, retorting, leaching, or other chemical or physical processing of coal or uranium. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(36) ~~(35)~~ "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the department.

(a) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included in this category.

(b) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of the use is also included.

(c) "Grazingland" means land, including both grasslands and forest lands, where the indigenous vegetation is actively managed for grazing or browsing or occasional hay production. Land used for facilities in support of such operations which is adjacent to or an integral part of these operations is also included.

(d) "Forestry" means use or management of land for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(e) "Residential" means use of land for single- and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) "Industrial/Commercial" means use of land for:

(i) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood

processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of such operations is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(ii) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(g) "Recreation" means use of land for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) "Fish and wildlife habitat" means land used wholly or partially in the production, protection or management of species of fish or wildlife.

(i) "Developed water resources" means use of land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land" means land with no current use or management. It includes land that has never been developed, or, if previously developed, land that has been allowed to return naturally to an undeveloped state.

(37) ~~(36)~~ "Major revision" means any change in the mining or reclamation plan which:

(a) results in a significant change in the postmining contour map;

(b) results in a significant change in the postmining drainage plan;

(c) results in a change in the postmining land use;

(d) results in a significant changes in the bonding level within the permitted area; and

(e) results in a change which may affect the reclaimability of the area or the hydrologic balance on or off of the permitted area.

(38) ~~(37)~~ "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by strip or underground coal mining operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit

the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

(39)~~(38)~~ "Mine plan area" means the area of land and water within the boundaries of all permit areas during the entire life of the strip or underground mining operation. At a minimum, it includes all areas which are or will be affected during the entire life of those operations. Other terms defined in this subchapter which relate closely to mine plan area are: (a) "permit area", which will always be within or the same as the mine plan area; (b) "area of land affected", which will always be within or the same as the permit area; and (c) "adjacent area", which may surround or extend beyond the area of land affected , permit area, or mine plan area.

(40)~~(39)~~ "Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105½ C.

(41)~~(40)~~ "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for plant germination and growth.

(42)~~(41)~~ "Noxious plants" means species that have been included on official state and county lists of noxious plants.

(43)~~(42)~~ "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(44)~~(43)~~ "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff. The term does not include intermittent streams or ephemeral streams.

(45)~~(44)~~ "Permanent diversion" means a diversion remaining after a strip or underground mining operation is completed which has been approved for retention by the department.

(46)~~(45)~~ "Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the department. This area shall include, at a minimum, all areas which are or will be affected by the strip or underground mining operations during the term of the permit.

(47)~~(46)~~ "Person having an interest which is or may be adversely affected or person with a valid legal interest" shall include any person:

(a) who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by a prospecting or strip or underground mining operation or any related action of the department; or

(b) whose property is or may be adversely affected by a prospecting or strip or underground mining operation or any related action of the department.

(48) ~~(47)~~ "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

(49) ~~(48)~~ "Prime farmland" means those lands which are defined in 7 CFR 657, as amended, but which must have also been historically used for cropland as that phrase is defined above.

(50) ~~(49)~~ "Principal shareholder" means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

(51) ~~(50)~~ "Probable cumulative impacts" means the expected total qualitative and quantitive, direct and indirect effects of mining and reclamation operations on the hydrologic regime.

(52) ~~(51)~~ "Probable hydrologic consequence" means the projected result of proposed strip or underground mining operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the depth to ground water; the surface or ground water flow, timing and pattern; the stream channel conditions; and the aquatic habitat on the permit area and ~~other-affected~~ adjacent areas.

(53) ~~(52)~~ "Productivity" means the vegetative yield produced by a unit area for a unit of time.

(54) ~~(53)~~ "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(55) ~~(54)~~ "Ramp roads" means those roads leading from the pit into the haul road.

(56) ~~(55)~~ "Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

(57) ~~(56)~~ "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and percolate to the zone of saturation.

(58) ~~(57)~~ "Recurrence interval" means the interval of time in which a precipitation event is expected to occur

once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur, on the average, once in 10 year.

(59) ~~(58)~~ "Reference area" means a land unit maintained under approved management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that is produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area as determined by premining inventories.

(60) ~~(59)~~ "Regional Director" means the Director of the Region V, Office of Surface Mining, or the Regional Director's representative.

(61) ~~(60)~~ "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(62) ~~(61)~~ "Road" means a surface right-of-way for purposes of travel by land vehicles used in prospecting or strip or underground mining operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access, haul, and ramp roads constructed, used, reconstructed, improved or maintained for use in prospecting or strip or underground mining operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure which are promptly replaced by roads associated with the prospecting or mining operation which are located in the identical right-of-way as the pioneer or construction roadway.

(63) ~~(62)~~ "Safety factor" means the ratio of the available shear strength to the developed shear stress or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(64) ~~(63)~~ "Secretary" means the Secretary of the Interior or the Secretary's representative.

(65) ~~(64)~~ "Sediment" means undissolved organic or inorganic material greater than .45u in size transported or deposited by water.

(66) ~~(65)~~ "Sedimentation pond" means a primary sediment control structure designed, constructed and maintained in accordance with Rule VII and including but not limited to a barrier, dam, or excavated depression which slows down runoff water to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control

structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(67) ~~(66)~~ "Significant, imminent environmental harm to land, air or water resources" means:

(a) An "environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is "imminent", if a condition, practice, or violation exists which--

(i) is causing such harm; or

(ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 82-4-251.

(c) An environmental harm is "significant" if that harm is appreciable and not immediately reparable.

(68) ~~(67)~~ "Soil Horizon" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major types of soil horizons are:

(a) the A horizon which is the uppermost mineral layer. It is the layer of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest~~;~~;

(b) the B horizon which is the layer that typically is immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons~~;~~;

(c) the C horizon which is the deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.

(69) ~~(68)~~ "Soil survey" means field and related investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(70) ~~(69)~~ "Spoil" means overburden that has been removed during strip or underground mining operations.

(71) ~~(70)~~ "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the configuration of the mass, or by otherwise modifying physical or chemical properties, such as providing a protective surface coating.

(72) ~~(71)~~ "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where

water is available for use by vegetation. Subirrigation may be identified by:

(a) diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;

(b) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;

(c) mottling of the soils in the root zones;

(d) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(e) an increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.

(73) ~~(72)~~ "Surety bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in Montana.

(74) ~~(73)~~ "Surface water" means water that is either flowing or standing on the surface of the earth.

(75) ~~(74)~~ "Suspended solids or nonfilterable residue" (expressed as milligrams per liter), means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(76) ~~(75)~~ "Temporary diversion" means a diversion of a stream or overland flow which is used during prospecting or strip or underground mining operations and not approved by the department to remain after reclamation as part of the approved postmining land use.

(77) ~~(76)~~ "Test pit" means an excavation for prospecting by means other than drilling.

(78) ~~(77)~~ "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(79) ~~(78)~~ "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by prospecting or strip or underground mining operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(80) ~~(79)~~ "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of

valleys which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

(81) ~~(80)~~ "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

(82) ~~(81)~~ "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or material deposited by sheetwash, rillwash, or wind.

(83) ~~(82)~~ "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20½° or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10½°.

(84) ~~(83)~~ "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(85) ~~(84)~~ "Waste" means, earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from the mineral product and are slurried or otherwise transported from processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of the mineral.

(86) ~~(85)~~ "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

RULE II STRIP MINE PERMIT APPLICATION REQUIREMENTS (1) Format and Supplemental Information.

(a) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the department.

(b) All tests, analyses or surveys carried out pursuant to these rules and regulations shall be performed or certified by a qualified person using scientifically valid techniques approved by the department.

(c) All chemical and physical laboratory analyses shall be conducted by a laboratory using departmentally approved and standardized procedures~~.~~ The operator shall

collect ~~collection of~~ duplicate or split samples at a frequency determined by the department. ~~by the applicant for submission to the department or its representative, or otherwise collected by the department which will then have the samples analyzed.~~

(d) All technical data submitted in the application shall be accompanied by:

(i) names of persons or organizations which collected and analyzed such data;

(ii) dates of the collection and analyses; and

(iii) descriptions of methodology used to collect and analyze the data.

(e) An application for a strip mining permit shall be made on forms provided by the department.

(f) For applications to mine areas containing federal coal, ten (10) copies of all applications, maps, reports or other informational data shall be required. Three copies shall be sent to the department and 7 to the Regional Director. For applications to mine areas not containing federal coal, three copies of all applications, maps, reports, and other informational data shall be submitted to the department.

(g) All maps depicting detail will be at a scale of 400 feet to the inch, or other scale as approved by the department. Maps depicting general conditions such as property ownership, will be at a scale of 1000 feet to the inch. Maps depicting the general surface conditions of large areas such as the location of prospecting drill holes will be on a current 7.5 minute U.S. Geological Survey map or equivalent.

(h) With the information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archeological, cultural and historic features, the applicant shall submit the name, address, and position of officials of each private or academic research organization or governmental agency consulted in obtaining that information.

(2) Minimum Requirements for Legal, Financial, Compliance, and Related Information.

Each application shall contain the following information:

(a) the permanent and temporary post office addresses of the applicant including phone number;

(b) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highway;

(c) the names and addresses of legal and equitable owners of record, lessees, or purchase record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half mile of any part of the affected area;

(d) the names and addresses of the present owners of

record of all subsurface minerals in the land to be affected;

~~(e) the source of the applicant's legal right to mine the mineral on the land affected by the permit;~~

(e) ~~(f)~~ the names and addresses of any persons who are engaged in strip or underground mining on behalf of the applicant and any person who will conduct such operations should the ~~application~~ permit be granted;

(f) ~~(g)~~ a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(i) names and addresses of every officer, partner, director, or other person performing a function similar to a director to the applicant;

(ii) name and address of any person who is a principal shareholder of the applicant; and

(iii) names under which the applicant, partner, or principal shareholder previously operated a strip or underground coal mining operation in the United States within the 5 years preceding the date of application;

(g) ~~(h)~~ if any owner, holder, purchaser, or operator, identified under paragraphs (2)(a) through ~~(f)~~ (e) of this rule, is a business entity other than a single proprietor, the names and addresses of their respective principals, officers, and resident agents;

(h) ~~(i)~~ a statement of any current or previous coal mining permits in the United States held by the applicant subsequent to 1970 and by any person identified in paragraph (f) ~~(a)(a)~~ (iii) of this section, and of any pending permit application to conduct strip or underground coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the department for each of those coal mining operations;

(i) ~~(j)~~ the name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all sections, if any;

(j) ~~(k)~~ a list of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit;

(k) ~~(l)~~ a statement whether the applicant or any person associated with the applicant holds or has held any ~~other~~ prospecting or uranium operating permits under the Act and an identification of those permits;

(l) ~~(m)~~ a certified statement of whether the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, is in compliance with 82-4-251 and, if known, whether every officer, partner, director,

or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251, and whether any of the foregoing parties or persons have ever had a strip mining or underground mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip mining or underground mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached including:

(i) identification number and date of issuance of the permit or date and amount of bond or similar security;

(ii) identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(iii) the current status of the permit, bond, or similar security involved;

(iv) the date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(v) the current status of these proceedings;

(m) ~~(n)~~ a listing of each violation notice received by the applicant in connection with any strip or underground coal mining operation during the 3-year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation ~~enacted pursuant to federal law, rule, or regulation, or of any provision of the federal act~~ pertaining to air, ~~or~~ water and other matters of environmental protection. The application shall also contain a statement regarding each violation notice, including:

(i) the date of issuance and identity of the issuing regulatory authority, department, or agency;

(ii) a brief description of the particular violation alleged in the notice;

(iii) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;

(iv) the current status of the proceedings and of the violation notice; and

(v) the actions, if any, taken by the applicant to abate the violation;

(n) ~~(o)~~ a description of the documents upon which the applicant bases his or her legal right to enter and begin strip ~~or underground~~ mining ~~activities~~ operations in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents

by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant;

(o) ~~(p)~~ where the private mineral estate to be mined has been severed from the private surface estate, the following information for lands within the permit area:

(i) a copy of the written consent of the surface owner to the extraction of ~~coal~~ mineral by strip or underground mining methods; or

(ii) a copy of the document of conveyance that grants or reserves the right to extract the mineral;

(p) ~~(q)~~ a statement of available information on whether the proposed permit area is within an area designated unsuitable for ~~surface~~ strip mining ~~activities~~ operations or under study for designation in an administrative proceeding and if the applicant claims the exemption based on substantial legal and financial commitments made before January 4, 1977, information supporting the applicant's claim;

(q) ~~(r)~~ if strip ~~or underground~~ mining within 300 feet of an occupied dwelling is proposed, the waiver of the owner of the dwelling;

(r) ~~(s)~~ a statement of the anticipated or actual starting and termination date of each phase of strip mining ~~activities~~ and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit;

(s) ~~(t)~~ either a certificate of liability insurance or evidence that the self-insurance requirements of section 82-4-222(5) are satisfied;

(t) ~~(u)~~ a list of all other licenses and permits needed by the applicant to conduct the proposed strip ~~or underground~~ mining ~~activities~~. This list shall identify each license and permit by:

(i) type of permit or license;

(ii) name and address or issuing authority;

(iii) identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses;

(iv) if a decision has been made, the date of approval or disapproval by each issuing authority; and

(v) an identification by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection;

(u) ~~(v)~~ the name, address, and telephone number of the resident agent who will accept service of process on behalf of the applicant;

(v) ~~(w)~~ a copy of the newspaper advertisement of the application and proof of publication as required in Rule III.

(w) ~~(x)~~ A map of the mine plan area showing the areas upon which strip or underground mining occurred:

(i) prior to August 3, 1977;

(ii) after August 3, 1977, and prior to May 3, 1978;

(iii) after May 3, 1978 and prior to the approval of the state's permanent regulatory program by OSM pursuant to Public Law 95-87.

(3) Minimum Requirements for Information on Environmental Resources. The following environmental resources information shall also be included as part of an application for a strip mining permit:

(a) the size, sequence, and timing of the subareas of the mine plan area for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed surface mining activities;

(b) a listing, location and description of the archaeological, historical, ethnological and cultural values of the proposed mine plan and adjacent area ~~to be affected~~. (Such values shall be located and identified on accompanying maps. Published informational research or other information must be referenced);

(c) a comprehensive listing, location and description of significant or unique scenic and/or geological formations or sites;

(d) a narrative explanation or other data showing that the permit area does not possess special, exceptional, critical, or unique characteristics as defined in section 82-4-227 and that surrounding land does not possess special, exceptional, critical or unique characteristics that would be adversely affected by mining;

(e) a narrative and graphic account of groundwater hydrology, including but not limited to the lithology, thickness, hydraulic conductivity, transmissivity, recharge storage and discharge characteristics, extent of aquifer, production data (if there is production) and water quality analyses for each aquifer within the mine plan area and adjacent areas; to assure protection of off-site water supplies, potential and developed, the report shall include:

(i) a listing of all known or readily discoverable wells and springs located three (3) miles downdip from the area to be mined and within 1 mile of the area to be mined in all other directions unless a hydrologic boundary justifies a lesser distance;

(ii) a description of alternative water supplies to be undisturbed by mining that could be developed to replace water supplies diminished in quality or quantity by mining activities;

(f) hydrologic data necessary to monitor water quality and quantity shall be available upon request by the depart-

ment. Such data will be generated ~~by a departmentally certified laboratory~~ using departmentally approved and standardized procedures;

(q) a detailed description of all materials that will be handled during mining or backfilling operations. The description shall include all physical, chemical, water infiltration, artificial weathering and plant growth data necessary to identify those materials that are potentially acid- and alkali-producing, toxic-forming, unstable, erodible or otherwise undesirable with respect to use as plant rooting media, landscape stability, aquifer reestablishment, post-mining ground and surface water quantity and quality both on and off site, and post-mining land use. All laboratory work in this regard will be conducted by a laboratory using departmentally approved and standardized procedures;

(h) surface water information including:

(i) the name of the watershed which will receive water discharges;

(ii) the ~~name of the watershed which will receive water discharges;~~ location of all surface water bodies such as streams, lakes, ponds, and springs;

(iii) the location of any water discharge into any surface body of water;

(iv) descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed mine plan and adjacent areas;

(v) minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variances; and

(vi) water quality data to identify the characteristics of surface waters in discharging into, or which will receive flows from surface or ground water from ~~affected~~ permitted areas within the proposed mine plan area, sufficient to identify seasonal variations, showing:

(A) total dissolved solids in milligrams per liter;

(B) total suspended solids in milligrams per liter;

(C) acidity;

(D) pH in standard units;

(E) total and dissolved iron in milligrams per liter;

(F) total manganese in milligrams per liter; and

(G) such other information as the department determines is relevant;

(i) the extent to which the proposed strip ~~or underground~~ mining operations may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed mine plan or adjacent areas for domestic, agricultural, industrial, or

other legitimate use. If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources;

(j) climatological information, including:

(i) the average seasonal precipitation;

(ii) the average direction and velocity of prevailing winds; and

(iii) seasonal temperature ranges; and

(iv) such additional data as the department deems necessary to ensure compliance with the requirements of this subchapter;

(k) vegetative surveys as described in 82-4-222(2)(k) of the Act, which shall include:

(i) a vegetative map (1:400) acceptable to the department which delineates community types based on two (2) or more dominant species, which are species which, by their structure, number, or coverage, have the greatest functional influence on the type;

(ii) a narrative describing the community types by listing associated species and discussing environmental factors controlling or limiting the distribution of species. Current condition and trend shall be discussed for each community type or portion thereof if significant differences exist within a type; and

(iii) a range site map;

(l) a wildlife survey, which shall include:

(i) a listing of the fish and wildlife (including, but not limited to birds, mammal, fishes, reptiles, and amphibians) species utilizing the permit area, including any species on the rare and endangered list prepared by the U.S. Bureau of Sports Fisheries and Wildlife (Threatened Wildlife of the United States);

(ii) population density estimates of each species insofar as practicable;

(iii) season or seasons of use by each species must be noted along with a discussion of winter concentration areas, fawning or calving areas, nesting or brooding areas and spawning areas in the area affected;

(iv) an aerial reconnaisance photographic survey of the area to be affected, if required by the department;

(v) the wildlife survey shall include an area 2 miles in all directions from the permit area. The survey shall only include the proposed mine plan area for species whose home ranges do not extend beyond the proposed mine plan area. The department may modify the 2 mile requirements if the applicant cannot gain access to portions of the 2 mile area. However in all cases the information required by (i) through (iv) must be furnished. Also included shall be

a wildlife habitat map for the entire wildlife survey area;

(m) a soil survey according to standards of the National Cooperative Soil Survey describing all major soils being present on the proposed permit area and their suitability for revegetative purposes. The soil survey shall include the following information:

(i) description, sampling, and analysis of soil horizons in sufficient detail to identify the soil series, phases, and mapping units present within the area of operations and to determine the depths to which all identified soils should be salvaged. Each horizon sample shall be analyzed by a laboratory, using departmentally approved and standardized procedures for the following parameters:

(A) the pH;

(B) the salt hazard (electrical conductivity);

(C) sodium adsorption ratio; and

(D) particle size analysis (texture);

(ii) a soils map acceptable to the department. The scale shall be one (1) inch equals four hundred (400) feet unless otherwise altered or approved by the department. Enlarged aerial photographs may be used as a map base. The map or photograph shall include:

(A) the soil mapping units present and their boundaries. The operator shall indicate within the various soil mapping units the depth to which he proposes to strip topsoil;

(B) soil sample map locations correlated to soil type and horizon testing;

(iii) further soil studies or information if required by the department;

(n) a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(i) a map and supporting narrative of the uses of the land existing at the time of the filing of the application (if the premining use of the land was changed within 5 years before the anticipated date of begining the proposed operations, the historic use of the land shall also be described.);

(ii) a narrative of land capability and productivity, which analyzes the land-use description under paragraph (i) in conjunction with other environmental resources information required under this subsection. The narrative shall provide analyses of:

(A) the capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area;

(B) the productivity of the proposed permit area before mining, expressed as average yield of food, fiber,

forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies;

(C) a statement of whether the proposed mine plan area has been previously mined, and, if so, the following information, if available:

(I) the type of mining method used;

(II) the coal seams or other mineral strata mined;

(III) the extent of coal or other minerals removed;

(IV) the approximate dates of past mining; and

(V) the ~~application shall contain a description of the existing land~~ uses of the and land use ~~classifications under local law, if any, of the proposed mine plan and adjacent areas~~;

(D) ~~(VI)~~ the application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed mine plan and adjacent areas;

(o) maps meeting the following requirements:

(i) Contents. Maps shall contain the following information;

(A) the owners of record of the surface of the land to be affected by the permit and the owners of record of all surface area within one-half mile of any part of the affected area;

(B) the owners of record of all subsurface minerals in the land to be affected;

(C) the boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(D) the boundaries of all areas proposed to be affected over the estimated total life of the proposed strip ~~or underground~~ mining operations, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought and any cropline of the mineral to be mined;

(E) the names and locations of roads, buildings, cemeteries, oil and gas wells, pipelines, utility lines, and deep or surface mining on the permit area ~~of land affected~~ and within 1,000 feet of such area;

(F) the location and boundaries of any proposed reference areas for determining the success of revegetation;

(G) the locations of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area and those surface waters which will receive discharges from affected areas in the proposed mine plan area;

(H) the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the mine plan or adjacent areas;

(I) any land within the proposed mine plan area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section (5)(a) of the Wild and Scenic Rivers Act;

(J) the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations;

(K) buildings, utility corridors and facilities to be used;

(L) the area of land to be affected within the proposed mine plan area, according to the sequence of mining and reclamation;

(M) each area of land for which a performance bond or other equivalent guarantee will be posted;

(N) each ~~coal~~ mineral storage, cleaning and loading area and each topsoil, spoil, coal waste, and non-coal waste storage area;

(O) elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

(P) each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

(Q) each air pollution collection and control facility;

(R) each source of waste and each waste disposal facility relating to ~~coal~~ processing or pollution control;

(S) each facility to be used to protect and enhance fish and wildlife and related environmental values;

(T) each explosive storage and handling facility;

(U) the location of each sedimentation pond, permanent water impoundment, and in accordance with paragraph (4)(h) and fill area for the disposal of excess spoil in accordance with paragraph (4)(a);

(V) the date on which each map was prepared and the north point;

(W) the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(X) the location of the test boring holes; and

(Y) the surface location lines of any geologic cross sections which have been submitted; and

(Z) the location and extent of subsurface water, if encountered, and the location of surface water bodies including springs, constructed on natural drains, and irrigation ditches, within the proposed mine plan and adjacent areas;

(ii) Procedures for Preparation and Submission.

(A) Maps, plans, and cross-sections required under paragraphs (M), (N), (O), (T) and (U) above shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture, except that:

(I) maps, plans and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and

(II) spoil disposal facilities, maps, plans, and cross-sections may only be prepared by a qualified registered professional engineer.

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

(iii) maps other than those outlined in (i) and (ii) above necessary to meet the requirements of this rule or other rules in this subchapter shall also be submitted;

(p) a prime farmland investigation to determine whether lands within the proposed mine plan area may be prime farmlands. The investigation shall be conducted under the following criteria:

(i) the land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations:

(A) the land has not historically been used as cropland;

(B) the slope of the land is 10 percent or greater;

(C) the land is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is 14 inches or less;

(D) other factors exist, such as a very rocky surface, or the land is frequently flooded, during the growing season, more often than once in 2 years, and the flooding has reduced crop yields; or

(E) on the basis of a soil survey of lands within the mine plan area, there are no soil map units that have been designated prime farmland by the U.S. Soil Conservation Service;

(ii) if the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one of the criteria of paragraph (i) above;

(iii) if the investigation indicates that lands within the proposed mine plan area may be prime farmlands, the applicant shall contact the U.S. Soil Conservation Service to determine if the relevant soils as described and mapped under (3)(m) above have been designated as prime farmlands.

(A) When a soil survey of lands within the proposed mine plan area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with subsection (5) of this rule.

(B) When a soil survey for lands within the proposed mine plan area does not contain soil map units which have been designated as prime farmland after review by the U.S. Soil Conservation Service, the applicant shall submit a request for negative determination for non-designated land with the permit application establishing compliance with paragraph (i) above;

(q) a description of the geology, hydrology, and water quality and quantity of all lands within the proposed mine plan and adjacent and general areas necessary to assess the hydrologic impact of mining the proposed permit area, including information on characteristics of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The department shall provide the applicant with adequate information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed mine plan area and within the general area to the extent that this data is available from an appropriate federal or state agency. If this information is not available from those agencies, the applicant may gather and submit this information to the department as part of the permit application. However, the application may not be deemed complete until this information is made available in the application.

(4) Minimum Requirements for Reclamation and Operations Plan.

(a) General Requirements. Each application shall contain a description of the mining operations proposed to

be conducted during the life of the mine within the proposed mine plan area, including at a minimum, the following:

(i) a narrative description of the type and method of ~~coal~~ mining procedures and proposed engineering techniques, anticipated annual and total production of ~~coal~~ mineral, by tonnage, and the major equipment to be used for all aspects of those operations which also includes:

(A) a narrative and cross-sections showing the plan of highwall reduction, including the limits of buffer zone;

(B) a narrative description of the derivation of the bulking factor (swell) used by the applicant in calculation of spoil volumes, ~~g~~generation of post mining contour maps, and machine efficiency studies. Calculations used in the derivation shall be included;

(C) a map showing the post mining topography which the applicant proposes to meet at the time of final bond release. The map shall be keyed to cross-section or set of cross-sections, drawn to scale, depicting the removal of overburden and mineral and the replacement of the swelled spoil such as to demonstrate that the postmining contour map can be achieved;

(D) a description of the program for early detection of grading problems which would result in final graded topography not congruent with the postmining contour map. Upon detection of such a grading problem, the permittee shall notify the department in writing within ten working days. The notification shall contain at a minimum a preliminary proposal for measures to remedy the problem;

(ii) a narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in Rule XII);

(A) dams, embankments, and other impoundments;

(B) overburden and topsoil handling and storage areas and structures;

(C) ~~coal~~ mineral removal, handling, storage, cleaning, and transportation areas and structures;

(D) spoil, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

(E) mine facilities; ~~and~~

(F) water and air pollution control facilities; and

~~(F)~~ (G) any additional information the department deems useful.

(b) Existing Structures. Each application shall contain a description of each existing structure proposed to be ~~used~~ modified in connection with or to facilitate the strip ~~or underground coal~~ mining and reclamation operation. The description shall include:

(i) design specifications for the modification or

reconstruction of the structure to meet the design and performance standards of Rules IV through XVIII of this subchapter;

(ii) a construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(iii) provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards Rules IV through XVIII of this subchapter are met; and

(iv) a showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

(c) Blasting Plan. Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of Rule VI and including the following:

(i) types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;

(ii) description of procedures and plans for recording and retention of information on the following during blasting:

(A) drilling patterns, including size, number, depths, and spacing of holes;

(B) charge and packing of holes;

(C) types of fuses and detonation controls;

(D) sequence and timing of firing holes;

(iii) description of blasting warning and site access control equipment and procedures;

(iv) description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used;

(v) description of plans for recording and reporting to the department the results of preblasting surveys, if required; and

(vi) description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed.

(d) Air Pollution Control Plan.

(i) For all strip ~~or underground~~ mining operations with projected production rates exceeding 1,000,000 tons of ~~coal~~ mineral per year, the application shall contain an air pollution control plan which includes the following:

(A) an air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under paragraph (i)(B) of this subsection to comply with federal and state air quality standards; and

(B) a plan for fugitive dust control practices as required by Rule XI.

(ii) For all other strip ~~or underground~~ mining operations the application shall contain:

(A) the requirements of (i)(A) above, if required by the department; and

(B) the plan required by (i)(B) above.

(e) Fish and Wildlife Plan.

(i) Each application shall contain a fish and wildlife plan, consistent with Rule X which provides:

~~(A)~~(i)a statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during strip ~~and underground coal~~ mining operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the mine plan area and portions of adjacent areas as determined by the department pursuant to paragraph (3)(l), nothing herein shall be construed to weaken the requirement of section 82-4-233(l)(a);

(B) if the applicant states that it will not be practicable in accordance with ~~the~~ subparagraph (e)(i) above, to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed, a statement shall be provided which establishes, to the satisfaction of the department, why it is not practicable to achieve such a condition.

(f) Permit Area Information. Each plan shall contain the following information for the proposed permit area:

(i) a detailed timetable for the completion of each major step in the reclamation plan;

(ii) a detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond with supporting calculations for the estimates;

(iii) a plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area. The plan for backfilling shall show the final location of all overburden and parting materials in the fill;

(iv) a plan for removal, storage, and redistribution of topsoil, overburden, and other material;

(v) a plan for revegetation including, but not limited to, descriptions of:

(A) the schedule of revegetation;

(B) species and amounts per acre of seeds and seedlings to be used, including purity and germination, calculated as pure live seed;

(C) methods to be used in planting and seeding;

(D) mulching techniques;

(E) measures proposed to be used to determine the success of revegetation;

(F) a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(vi) a description of the measures to be used to maximize the use and conservation of the coal resource;

(vii) a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of;

(viii) a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(ix) a description, including appropriate cross-sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area;

(x) a description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards~~.~~ or a copy of a valid permit issued under these laws.

(g) Protection of Hydrologic Balance.

(i) Each reclamation and operation plan shall contain a detailed description, with appropriate maps and cross-section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with Rules IV through XX, to ensure the protection of:

(A) the quality of surface and ground water systems, both within the proposed mine plan and adjacent areas, from the adverse effects of the proposed strip or underground mine operations;

(B) the rights of present users of surface and groundwater; and

(C) the quantity of surface and groundwater both within the proposed mine plan area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with (3)(i) of this rule and Rule VII, where the protection of quantity cannot be ensured.

(ii) The description shall include:

(A) a plan for the control, in accordance with Rule VII, of surface and groundwater drainage into, through and out of the proposed mine plan area;

(B) a plan for the treatment, where required, of surface and groundwater drainage from the area to be disturbed by the proposed operations, and proposed quantitative limits on pollutants in discharges subject to Rule VII, or state or federal laws. The plan shall include design

specification, drawings, method of operation and control, and quality of discharge of the treatment facilities.

(iii) a plan for the restoration of the approximate recharge capacity of the mine plan area in accordance with Rule VII; and

(iv) a plan for the collection, recording, and reportin accordance with Rule VII. The description shall include a determination of the probable hydrologic consequences of the proposed ~~surface~~ strip mining ~~activities~~ operation, on the proposed mine plan area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and groundwater systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the department.

(h) Ponds and Embankments.

(i) General Requirements. Each application shall include a general plan for each proposed sedimentation pond and water impoundment within the proposed mine plan areas.

(A) Each general plan shall:

(I) be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture;

(II) contain a description, map, and cross section of the structure and its location;

(III) contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(IV) contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occured; and

(V) contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the department. The department must have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(B) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall:

(I) be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, and surveying, and landscape architecture;

(II) include any geotechnical investigation, design, and construction requirements for the structure;

(III) describe the operation and maintenance requirements for each structure; and

(IV) describe the timetable and plans to remove each structure, if appropriate.

(C) Each detailed design for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) shall:

(I) be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor;

(II) include any design and construction requirements for the structure, including any required geotechnical information;

(III) describe the operation and maintenance requirements for each structure; and

(IV) describe the timetable and plans to remove each structure, if appropriate.

(ii) Sedimentation Ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of Rule VII. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(iii) Permanent and Temporary Impoundments. Permanent and temporary impoundments shall be designed to comply with Rule VII and the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(i) Strip Mining Near Underground Mining. For strip mining ~~activities~~ operations within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 82-4-227(8).

(j) Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with the Act and Rule VII.

(k) Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the department and other agencies as required in Rule XXII.

(l) Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and cross-sections or other proof required by the department, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under Rule XXII, the applicant is seeking approval of:

(i) conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(ii) relocating a public road.

(m) Disposal of Excess Spoil.

(i) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to Rule IV(4). These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal (if appropriate) of the site and structures.

(ii) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(A) the character of bedrock and any adverse geologic conditions in the disposal area;

(B) a survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(C) a survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(D) a technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(E) a stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(iii) If rock-toe buttresses or key-way cuts are required, the application shall include the following:

(A) the number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(B) engineering specifications utilized to design the rock-toe buttress or key-way cuts which shall be determined in accordance with paragraph (ii)(E) of this subsection.

(n) Transportation Facilities. Each application shall contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(i) specifications for each road width, road gradient,

road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

(ii) a report of appropriate geotechnical analysis, where approval of the department is required for alternative specifications;

(iii) a description of measures to be taken to obtain approval of the department for alteration or relocation of a natural drainageway;

(iv) a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert for approval by the department under Rule VII; and

(v) a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed mine plan area.

(o) Coal Conservation Plan.

(i) General Requirement. An application for a permit to strip ~~or underground~~ mine coal must include a coal conservation plan to allow determination of whether failure to conserve coal may occur.

(ii) Mandatory Information. The plan shall include:

(A) the results of all test boring, cross-sections, and analyses, including the following:

(I) a narrative interpretation of the results of all test borings or core samplings conducted on the area to be mined or otherwise affected, including the nature, depth, and thickness of all known strata, overburden, and all coal seams encountered;

(II) a map showing elevations and locations of test borings and coal sampling;

(III) geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the area to be mined or otherwise affected. The cross-sections shall depict the thickness and geological character of all known strata, beginning with the topsoil and going to and including the lowest coal seam which can be extracted using the most modern strip mining equipment available. Data shall be accumulated to a depth of 200 feet or greater depth as required by the department;

(IV) an analysis and summary of the chemical properties of all coal seams encountered including the content of sulfur, trace mineral elements, moisture, and ash as well as the British thermal unit (B.T.U.) content per pound;

(V) all coal crop lines and the strike and dip of the coal to be mined within the proposed mine plan area;

(VI) location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed mine plan and adjacent areas;

(VII) location and extent of existing or previously strip mined areas within the proposed mine plan area; and

(VIII) location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(B) a description of the location, quantity, and quality of all coal to be left unmined, accompanied by a detailed explanation of the reasons why the coal will not be mined. This explanation shall include coal which is to be left unmined in order to comply with the act as well as that coal which is to be left unmined because of the method of operation or because the coal is not strippable or marketable;

(C) where applicable, a range diagram type drawing showing any coal fenders to be left in place, and a detailed narrative description of the changes in the mine plan which would be necessary to recover the same and any potential effects of such changes.

(iii) Additional Information. If it is determined by the department, based on the information provided pursuant to the provisions of (i) and (ii) of this subsection, that an operator is or will be mining all of the minable and marketable coal no further information need be submitted. If, however, the department determines that it needs further information to make a determination, it may require the operator to submit the following:

(A) a description of the type of equipment and operations to be used, including but not limited to:

(I) the prime equipment model, year, size and capacity;

(II) the initial and depreciated cost of the prime equipment, including all earth moving equipment;

(III) the capability of the equipment to move earth at a fixed rate;

(IV) the plan for the excavation and placement of overburden materials;

(V) the plan for the removal and transportation of minerals; and

(VI) the anticipated plan of mining for a 2 year period;

(B) a detailed cost and revenue analysis on a per ton basis of coal mining and market conditions including, at a minimum:

(I) the estimated cost of mining;

(II) the estimated cost of reclamation;

(III) the estimated cost of transportation per ton;

(IV) the estimated annual taxes;

(V) the estimated market value of coal to be extracted

(VI) the estimated total gross yield to be received for coal extracted;

(VII) the estimated mining cost of coal to be left unmined; and

(VIII) the estimated market value of coal to be left unmined; and

(C) any other relevant information the department may require.

(iv) Hearing. Any operator or aggrieved person who believes that the department's decision to either require or not require the submission of the information contained in this subsection may petition the Board for a public hearing pursuant to the provisions of the Administrative Procedures Act.

(p) Grazing Plan. Unless alternate reclamation is proposed, detailed range and grazing management plans shall be submitted.

(5) Prime Farmlands: Special Application Requirements.

(a) Scope. This subsection applies to any person who conducts or intends to conduct strip ~~or underground~~ mining operations on prime farmlands. Areas where mining is authorized under permits issued prior to August 3, 1977, are exempt from the prime farmland reconstruction standards.

(b) Application Contents for Prime Farmland. If land within the proposed permit area is identified as prime farmland under subsection (3) of this rule, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:

(i) a soil survey of the permit area according to the standards of the National Cooperative Soil Survey, in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951)', and in accordance with this rule.

(A) These publications are hereby incorporated by reference as they exist on the date of adoption of this Part. They are on file and available for inspection at the Helena office of the department, and the national, state, and local offices of the U.S. Soil Conservation Service.

(B) The soil survey shall include a description of the original undisturbed soil profile and mapping unit(s) of each prime farmland soil, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops;

(ii) the proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with Rule XV;

(iii) the moist bulk density of each major horizon of each prime farmland soil in the permit area. The moist bulk density shall be determined by laboratory tests of samples taken from within the permit area according to procedures set forth in Soil Survey Laboratory Methods and Procedures

for Collecting Soil Samples (Soil Survey Investigations Report No. 1, U.S. Department of Agriculture, Soil Conservation Service, 1972). Other standard on-site methods of estimating moist bulk density may be used where these methods correct for particle size distribution and moisture content and are approved by the Soil Conservation Service or the department. In lieu of laboratory data from samples taken within the permit area, the department may permit use of moist bulk density values representing the soil series where such values have been established by the Soil Conservation Service;

(iv) the location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(v) if applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the A, B, or C soil horizons, to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management;

(vi) plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(vii) plans that demonstrate that the proposed method of reclamation will achieve vegetation to satisfactorily comply with Rule XV and XVI;

(viii) available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

(ix) A description of the area(s) of prime farmland with the same soils, slopes, and other pertinent characteristics and outside of the area proposed for disturbance but in the immediate vicinity of the mining operation, that will be used in determining revegetation success of mined and reclaimed prime farmland.

(x) actual or current estimated yields under a high level of management for each soil map unit from the USDA for each crop to be used in determining success of revegetation. These yield values or estimates shall be used by the department as target levels for determining success of revegetation,

if areas of prime farmland outside of the area proposed for disturbance are not available for comparison purposes. The target yield may be adjusted by the department in consultation with the Secretary of Agriculture before approval of the permit application;

(xi) in all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as non-mined land of the same soils in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to paragraph (5)(b)(i) of this rule.

(c) Consultation with Secretary of Agriculture. Before any permit is issued for areas that include prime farmlands, the department shall consult with the Secretary of Agriculture.

(d) Issuance of Permit. A permit for the mining and reclamation of prime farmland may be granted by the department, if it first finds, in writing, upon the basis of a complete application, that:

~~(i) the approved proposed postmining land use of these prime farmlands will be cropland;~~

(i)~~(ii)~~ the permit incorporates as specific conditions the contents of the plan submitted under paragraph (b) of this subsection, after consideration of any revisions to that plan suggested by the Secretary of Agriculture under paragraph (c) of this section;

(ii)~~(iii)~~ the applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(iii)~~(iv)~~ the proposed operations will be conducted in compliance with the requirements of Rule XV and XVI.

(6) Strip or Underground Coal Mining Operations on Areas or Adjacent to Areas including Alluvial Valley Floors: Special Application Requirements.

(a) Scope. This subsection applies to each person who conducts or intends to conduct strip ~~or underground~~ coal mining operations in, adjacent to or under a valley holding a stream in the arid or semi-arid regions.

(b) Alluvial Valley Floor Determination.

(i) Before applying for a permit to conduct, or before conducting strip ~~or underground~~ coal mining operations within a valley holding a stream or in a location where the adjacent area includes any stream in an arid or semi-arid area, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor or submit to the department the results of a field investigation of the proposed mine plan area and adjacent

area. The field investigations shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the department, after consultation with the applicant, to enable the department to make an evalution regarding the existence of the probable alluvial valley floor in the proposed mine plan area or adjacent area and to determine which areas, if any, require more detailed study in order to allow the department to make a final determination regarding the existence of an alluvial valley floor. Studies performed during the investigation by the applicant or subsequent studies as required of the applicant by the department, shall include an appropriate combination, adapted to site-specific conditions, of:

(A) mapping of unconsolidated stream-laid deposits holding streams including, but not limited to, geologic maps of unconsolidated deposits and stream-laid deposits, maps of streams, delineation of surface watersheds and directions of shallow groundwater flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, flood plains and channels showing surface drainage patterns;

(B) mapping of all lands included in the area in accordance with paragraphy (b) of this subsection and subject to agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasture lands and undeveloped rangelands exist and accompanied by measurements of vegetative productivity and type;

(C) mapping of all lands that are currently or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir, irrigated land, and topography of those lands;

(D) documentation that areas identified in this subsection are, or are not, subirrigated, based on groundwater monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling and water requirements of vegetation;

(E) documentation, based on representative sampling, that areas identified in paragraph (b) of this subsection are, or are not, flood irrigable, based on stream-flow water quality, water yield, soils measurements, and topographic characteristics;

(F) analysis of a series of aerial photographs, including color infrared imagery flown at a time of year to show any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial

valley floors.

(ii) Based on the investigations conducted under subsection ~~(5)~~(i), the department shall make a determination of the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The department shall determine that an alluvial valley floor exists if it finds that:

(A) unconsolidated streamlaid deposits holding streams are present; and

(B) there is sufficient water to support agricultural activities as evidenced by:

(I) the existence of flood irrigation in the area in question or its historical use;

(II) the capability of an area to be flood irrigated, based on stream-flow water yield, soils, water quality, and topography; or

(III) subirrigation of the lands in question, derived from the groundwater system of the valley floor.

(c) Application Contents for Operations Affecting Designated Alluvial Valley Floors.

(i) If land within the proposed permit area or adjacent area is identified as an alluvial valley floor and the proposed mining operation may affect an alluvial valley floor or waters that supply alluvial valley floors, the applicant shall submit a complete application for the proposed mining and reclamation operations, to be used by the department, together with other relevant information, including the information required by **paragraph** ~~(6)~~(b) of this subsection, as a basis for approval or denial of the permit. The complete application shall include detailed surveys and baseline data required by the department for a determination of:

(A) the characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions during and after mining;

(B) the significance of the area to be affected to agricultural activities;

(C) whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or groundwaters that supply the alluvial valley floor;

(D) the effectiveness of proposed reclamation with respect to requirements of the Act, and this subchapter; and

(E) specific environmental monitoring required to measure compliance with Rule XIV during and after operations.

(ii) Information required under this paragraph shall include, but not be limited to:

(A) geologic data, including geologic structure, and surficial geologic maps, and geologic cross-sections;

(B) soils and vegetation data, including a detailed soil survey and chemical and physical analyses of soils, a vegetation map and narrative descriptions of quantitative and qualitative surveyors, and land use data, including an evaluation of crop yields;

(C) surveys and data required under ~~this~~ paragraph ~~(b)~~ (c) of this subsection for areas designated as alluvial valley floors because of their flood irrigation characteristics shall also include, at a minimum, surface hydrologic data, including streamflow, runoff, sediment yield, and water quality analyses describing seasonal variations over at least 1 full year, field geomorphic surveys and other geomorphic studies;

(D) surveys and data required under ~~this~~ paragraph ~~(b)~~ (c) of this subsection for areas designated as alluvial valley floors because of their subirrigation characteristics, shall also include, at a minimum, geohydrologic data including observation well establishment for purposes of water level measurements, groundwater contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analyses describing seasonal variations over at least 1 full year, and physical and chemical analysis of overburden to determine the effect of the proposed mining operations on water quality and quantity;

(E) plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance or preclusion of farming on the alluvial valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and groundwater systems that supply alluvial valley floors;

(F) maps showing farms and ranches that could be affected by the mining and, if any farm or ranch includes an alluvial valley floor, statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farm or ranch's total agricultural activity including an economic analysis;

(G) such other data as the department may require.

(iii) The surveys required by paragraph ~~(b)~~ (c) of this subsection should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics which support the essential hydrologic functions and which must be evaluated in a complete application include, but are not limited to:

(A) characteristics supporting the function of collect-

ing water which include, but are not limited to:

(I) the amount and rate of runoff and a water balance analysis, with respect to rainfall, evapotranspiration, infiltration and groundwater recharge;

(II) the relief, slope, and density of the network of drainage channels;

(III) the infiltration, permeability, porosity and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer ~~associated with~~ that is hydraulically connected to the stream or ~~lie between~~ the ~~aquifer and~~ unsaturated valley fill below the stream and above the alluvial aquifer; and

(IV) other factors that affect the interchange of water between surface streams and groundwater systems, including the depth to groundwater, the direction of groundwater flow, the extent to which the stream and associated alluvial groundwater aquifers provide recharge to, or are recharged by bedrock aquifers;

(B) characteristics supporting the function of storing water which include, but are not limited to:

(I) ~~surface roughness,~~ slope, and vegetation of the channel, flood plain, and low terraces that retard the flow of surface waters;

(II) porosity, permeability, waterholding capacity, saturated thickness and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water bearing zones found beneath valley floor; and

(III) moisture held in soils or the plant growth medium within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation;

(C) characteristics supporting the function of regulating the flow of water which include, but are not limited to:

(I) the geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross-section, slopes and proportions of the channels, flood plains and low terraces, the nature and stability of the stream banks and the vegetation established in the channels and along the stream banks and flood plains;

(II) the nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods; and

(III) the nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e.,

recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e., baseflow);

(D) characteristics which make water available and which include, but are not limited to the presence of land forms including flood plains and terraces suitable for agricultural activities.

(7) Auger Mining: Special Application Requirements.

(a) Any application for a permit for operations covered by this subsection shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with Rule VII(1).

(8) Coal Processing Plants and Support Facilities Not Located At or Near the Minesite Nor Within the Mine Permit Area: Special Application Requirements.

(a) This subsection applies to any person who conducts or intends to conduct strip ~~or underground~~ coal mining operations utilizing coal processing plants or support facilities not within a permit area of a specific mine. Any person who operates such a processing plant or support facility must obtain a permit from the department in accordance with the requirements of this subchapter.

(b) Any application for a permit for operations covered by this subsection shall contain in the mining and reclamation plan, specific plans, including descriptions, maps, and cross-sections of the construction, operation, maintenance, and removal of the processing plants and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with this subchapter.

RULE III PERMIT PROCEDURES: OPERATING PERMITS AND PROSPECTING PERMITS FOR TEST PITS (1) Review of Application for Permit and Decision.

(a) Notice and filing.

(i) Public Notice. An applicant for an operating permit or ~~test pit pit~~ prospecting permit for test pits shall place an advertisement in a local newspaper of general circulation in the locality of the proposed strip or underground mining operations at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the permit application is filed with the department. The advertisement shall contain, at a minimum, the following information:

(A) the name and business address of the applicant;

(B) a map or description which shall:

(I) clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate

distance measurements, necessary to allow local residents to readily identify the proposed permit area;

(II) clearly show or describe the exact location and boundaries of the proposed permit area;

(III) state the name of the U.S. Geological Survey 7.5-minute quadrangle map(s) which contains the area shown or described if one is available; and

(IV) if a map is used, indicate the north point;

(C) the location where a copy of the application is available for public inspection under paragraph (c) of this subsection;

(D) the name and address of the department and the fact that written comments, objections, or requests for informal conferences on the application may be submitted to the department; and

(E) if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

(ii) Notice to Governmental Agencies.

(A) Upon receipt of an application for a permit, the department shall issue written notification of:

(I) the applicant's intention to mine a particularly described tract of land;

(II) the application number;

(III) where a copy of the application may be inspected; and

(IV) where comments on the application may be submitted.

(B) The written notifications shall be sent to:

(I) federal, state and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies;

(II) governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;

(III) sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(IV) the federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

(iii) Filing for Public Inspection.

(A) The applicant shall make a full copy of his or her

complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the department with the recorder at the courthouse of the county where the mining is proposed to occur, or if approved by the department, at another equivalent public office, if it is determined that that office will be more accessible to local residents than the county courthouse.

(B) The applicant shall file the copy of the complete application under paragraph (1)(a)(iii)(A) by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the public office at the same time the revision is submitted to the department.

(b) Submission of Comments by Governmental Agencies.

(i) The governmental entities specified in paragraph (1)(a)(ii) above may file written comments on permit applications with the department with respect to the effects of the proposed mining operations on the environment within their area of responsibility. These comments must be submitted to the department within 30 days of receipt of written notice pursuant to paragraph (1)(a)(ii) above.

(ii) The department shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under paragraph (1)(a)(iii) above. A copy shall also be transmitted to the applicant.

(c) Written Objections.

(i) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority shall have the right to file written objections to an initial or revised application for a permit with the department within 30 days after the last publication of the newspaper notice required in paragraph (1)(a)(i) above.

(ii) The department shall, immediately upon receipt of any written objections:

(A) transmit a copy of them to the applicant; and

(B) file a copy for public inspection in the Helena and Billings offices.

(d) Informal Conference.

(i) Any person whose interests are or may be adversely affected by the issuance of the permit, or the officer or head of any federal, state or local government agency or authority may, in writing, request that the department hold an informal conference on any application for a permit. The request shall:

(A) briefly summarize the issues to be raised by the requestor at the conference;

(B) state whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and

(C) be filed with the department not later than 30 days after the last publication of the newspaper advertisement placed by the applicant under paragraph (1)(a)(i) above.

(ii) Except as provided in (iii) below, if an informal conference is requested in accordance with this subsection, the department shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted according to the following:

(A) if requested under paragraph (d)(i)(B) of this subsection, it shall be held in the locality of the proposed mining;

(B) the department shall advertise the date, time, and location of the informal conference in a newspaper of general circulation in the locality of the proposed mine at least two weeks prior to the scheduled conference;

(C) if requested, in writing, by a conference requestor in a reasonable time prior to the conference, the department may arrange with the applicant to grant parties to the conference access to the mine plan area for the purpose of gathering information relevant to the conference;

(D) ~~The contested case provisions of the Administration Procedures Act shall not apply to the conduct of the informal conference.~~ the conference shall be conducted by a representative of the department, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond.

(iii) If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

(e) Review of Application.

(i) (A) The department shall review the complete application, written comments, written objections submitted, and records of any informal conference held.

(B) The department shall determine the adequacy of the fish and wildlife plan submitted pursuant to Rule II in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed strip or underground mining operations.

(ii) If the department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued.

(iii) If the department determines that issuance of the permit is prohibited pursuant to section 82-4-227(11), the department may issue the permit upon a showing that applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the violation. If the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any strip or underground coal mining operations being conducted under a permit issued according to this paragraph shall be immediately terminated.

(iv) Before any final determination that section 82-4-227(11) prohibits issuance of a permit or major revision, the applicant is entitled to a hearing pursuant to the case provisions of the Administrative Procedures Act.

(v) The department may not approve an application if the mining and reclamation would be inconsistent with other such operations or proposed or anticipated operations in areas adjacent to the proposed permit area.

(f) Findings and Notice of Decision.

(i) If an informal conference is held, the department shall give its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(ii) If no informal conference has been held, the department shall give its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

(g) Notice of Extension of Time to Commence Mining. The department shall specifically set forth in the permit any extension of the 3 year limitation granted pursuant to section 82-4-221(1).

(h) Conditions of Permit. The following conditions accompany the issuance of each permit:

(i) except to the extent that the department otherwise directs in the permit that specific actions be taken, the permittee shall conduct all ~~strip-or-underground-mining~~ operations as described in the application as approved by the department;

(ii) the permittee shall comply with any express conditions which the department places on the permit to ensure compliance with the act or this subchapter.

(2) Review of Existing Permits.

(a) The department shall review each permit issued during the term of the permit. This review shall occur not

later than the middle of the permit term.

(b) After this review, the department may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with the act and this subchapter.

(c) The department shall send a copy of its decision to the permittee.

(d) Any order of the department requiring revision or modification of permits shall be based upon written finding and shall be subject to the provisions for administrative review.

(3) Permit Revisions.

(a) A revision to a permit shall be obtained:

(i) for any changes in the operation as described in the original application and approved under the original permit; or

(ii) when required under subsection (2) above.

(b) The operator may not implement the revision before obtaining the department's approval.

(c) An application for major revision is subject to subsection (1) of this rule.

(4) Permit Renewals.

(a) Contents. Applications for renewals of a permit shall be made at least 30, but not more than 60 days prior to the expiration date. Renewal applications shall be on a form provided by the department, including, at a minimum, the following:

(i) a statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the original application for a permit or prior permit renewal;

(ii) a copy of the newspaper notice and proof of publication of same under paragraph (1)(a)(i) above; and

(iii) evidence that liability insurance policy or adequate self-insurance will be provided by the applicant for the proposed period of renewal.

(b) Processing and Review.

(i) Applications for renewal shall be subject to the requirements of public notification and participation contained in subsection (1).

(ii) If an application for renewal of a permit includes a proposal to extend operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications pursuant to 82-4-228.

(iii) If the operations authorized under the original permit were not subject to the standards contained in section

82-4-227(3)(b), because the permittee complied with the exceptions contained in section 82-4-227(4), the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan for the original permit shall not be subject to the standards contained in section 82-4-227(3)(b).

(iv) Before finally acting to grant the permit renewal, the department shall require any additional performance bond needed by the permittee to comply with section 82-4-225 and 232.

(c) Term. Any permit renewal shall be for a term not to exceed the period of the original permit.

(d) Approval or Denial.

(i) The department shall, upon the basis of application for renewal and completion of all procedures required under this subsection, issue a renewal of a permit, unless it is established and written findings by the department are made that:

(A) the terms and conditions of the existing permit are not being satisfactorily met;

(B) the present strip or underground mining operations are not in compliance with the environmental protection standards of the Act or Rules IV through XIX;

(C) the requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the Act, this subchapter and the reclamation plan on existing permit areas;

(D) the operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the department might require;

(E) any additional revised or updated information required by the department has not been provided by the applicant;

(F) the applicant has not agreed to comply with all applicable laws and rules in effect at the time of renewal; or

(G) the renewal is not subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251.

(ii) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(iii) The department shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

(iv) Any person having an interest which is or may be adversely affected by the decision of the department shall have the right to administrative review.

(5) Addition of Acreage. Any proposal to amend the permit by adding acreage other than incidental boundary amendments are subject to the same application, notice, and hearing requirements as an application for a new permit as required by 82-4-225.

(6) Transfer of Permits.

(a) No transfer or assignment of any permit may be made without the prior written approval of the department.

(b) The department may not approve any transfer or assignment of any permit unless the potential transferee or assignee:

(i) obtains the performance bond coverage of the original permittee by:

(A) obtaining transfer of the original bond;

(B) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the department. If such an agreement is reached, the department may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement; and

(C) providing sufficient bond ~~for~~ to cover the original permit in its entirety from inception to completion of reclamation operations; and

(ii) provides the department with an application for approval of such proposed transfer, assignment, or sale, including:

(A) the name and address of the existing permittee;

(B) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent; and

(C) the same information as is required in Rule II(2) for applications for new permits for those activities; or

~~(iii) obtain the written approval of the department for transfer assignment, or sale of rights, according to paragraph (c) of this section.~~

(c) (i) The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address of the department, indicating that ~~to which~~ comments may be sent.

(ii) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any

local, state or federal government agency may submit written comments on the application for approval to the department within 15 days of the publication of the newspaper notice described above.

(d) The department may, upon the basis of the applicant's compliance with the requirements of paragraphs (a), (b) and (c) of this subsection, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:

(i) the person seeking approval will conduct the operations covered by the permit in accordance with the Act and this subchapter;

(ii) the applicant has submitted a performance bond at least equivalent to the bond or other guarantee of the original permittee; and

(iii) the applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit.

(e) Any successor in interest seeking to change the conditions of its operations or any of the terms or conditions of the original permit shall:

(i) make application for a new permit if the change involves conducting operations outside the original permit area; or

(ii) make application for permit revision if the change does not involve conducting operations outside the original permit area.

(7) Administrative Review.

(a) Within 30 days after the applicant or permittee is notified of the final decision of the department concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights, or application for prospecting test pit, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision.

(b) The department shall commence the hearing within 30 days of such request. This hearing shall be a contested case hearing and no person who presided at an informal conference shall preside at this hearing.

(c) The department may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

(i) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) the person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(iii) the relief will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(iv) the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the department.

(d) A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or order of the hearing officer.

(e) Ex parte contacts between representatives of the parties before the hearing examiner and the hearing examiner shall be prohibited.

(f) Within 30 days after the close of the record, the hearing examiner shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing examiner with respect to the appeal.

(g) The burden of proof at such hearing shall be on the party seeking to reverse the decision of the department.

RULE IV PLAN OF MINING, BACKFILLING, AND GRADING

(1) Backfilling and Grading: General Requirements.

(a) Time limits. Backfilling and grading of the disturbed area shall be completed prior to removal of necessary reclamation equipment from the area of operation. If the operator for good cause shown cannot complete backfilling and grading requirements within the time limits set for current backfilling and grading, the department may approve a revised time table. Additional bonding may be required.

(b) Approximate Original Contour. All final grading on the area of land affected shall be to the approximate original contour of the land. The final surface of the restored area need not necessarily have the exact elevations of the original ground surface. No final graded slopes shall be steeper than five horizontal to one vertical (1v:5h) unless otherwise approved in writing by the department.

(c) Placement of Material. Backfilled material shall be placed to minimize adverse effects on groundwater, minimize off-site effects, and to support the approved postmining land use.

(d) Slopes. In order to achieve the approximate original contour, the permittee shall transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this subsection. The postmining graded slopes must approximate the premining natural slopes

in the area as defined in paragraphs (i) and (ii) below.

(i) (A) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the department in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the mineral outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the department. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the department to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the areas to be disturbed. Slope measurements may be made from topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(B) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the department. This grading must not be done so as to allow unacceptably steep slopes to be constructed.

(ii) The final graded slopes shall not exceed either the approximate premining slopes as determined according to paragraph (d)(i)(A) and approved by the department or any lesser slope specified by the department based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform.

(e) Cut and Fill Terraces. On approval by the department, in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(i) the width of the individual terrace bench shall not exceed 20 feet, unless specifically approved by the department as necessary for stability, erosion control, or roads included in the approved postmining land use plan;

(ii) the vertical distance between terraces shall be as specified by the department to prevent excessive erosion and to provide long-term stability;

(iii) the slope of the terrace outslope shall not exceed

lv:5h (20 percent), outslopes which exceed lv:5h may be approved, if they have a minimum safety factor of more than 1.3 for any condition of load likely to be encountered, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining; in no case may highwalls be left as part of terraces;

(iv) culverts and underground rock drains shall be used in the terrace only when approved by the department;

(v) terraces shall be installed in such a way so as not to prohibit vehicular access or revegetation procedures; and

(vi) additional surface manipulation procedures shall be installed as required by the department.

(f) Small Depressions. The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the department to minimize erosion, conserve soil moisture, or promote vegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by paragraph (g) of this subsection and by Rule VII.

(g) Permanent Impoundments. Permanent impoundments may be retained in mined and reclaimed areas, provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use and protection of the hydrologic balance are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to this rule.

(h) Burial of Waste Materials. All exposed mineral seams remaining after mining shall be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material. Acid-forming, toxic-forming, combustible, or any other waste materials identified by the department that are exposed, used, or produced during mining shall be covered with a minimum of 8 feet of the best available non-toxic and non-combustible material. If necessary, these materials shall be treated to neutralize toxicity in order to prevent water pollution and sustained combustion and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts or exposure by erosion, to provide an adequate depth for plant growth or to otherwise meet local conditions, the department may specify

thicker amounts of cover using non-toxic material, or, special compaction and isolation techniques to prevent contact of these materials with groundwater. Acid-forming or toxic-forming materials shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(i) An operator shall show where the overburden and parting strata materials are to be placed in the backfill. Materials which are not conducive to revegetation techniques, establishment, and growth shall not be left on the top nor within 8 feet of the top of regraded spoils nor at the surface of any other affected areas, unless the applicant can demonstrate to the department's satisfaction that a lesser depth will provide for reclamation consistent with the Act. The department may require that problem materials be placed at a greater depth.

(j) (i) Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or groundwater, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(ii) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within 8 feet of any coal outcrop or coal storage area.

(iii) For final disposal, the operator shall bury under adequate fill all materials set forth in 82-4-231(3); including burned coal, processing wastes, and combustibles only after approval of the method and site by the department. In the event that the operator plans to use fly-ash for fill material, it must be shown by adequate testing and analysis that the fly-ash material will not have any adverse or detrimental effect. Plans for placement of fly-ash or any other foreign matter or processes in the backfill must be approved by the department.

(k) Prevention of Leaching. Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of acid-forming or toxic-forming materials into surface or subsurface waters in accordance with Rule VII and wherever necessary to ensure the stability of the backfilled materials. The method and design specifications of placing and compacting such materials must be approved by the department before the acid-forming or toxic-forming materials are covered.

(l) Use of Waste for Fill. Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, the permittee must demonstrate to the department by hydrogeological means and chemical and physical analyses that use of these materials will not adversely affect public water, health, or safety and will not cause instability in the backfilled area.

(m) Thick Overburden. Where thick overburden is encountered, all highwalls and depressions will be eliminated by backfilling with spoil and suitable waste materials. The thick overburden provisions of this rule may apply only where the final thickness is greater than 1.2 times the sum of the overburden thickness and mineral thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area.

(n) Box Cut Spoils. Box cut spoils or portions thereof, shall be hauled to the final cut if:

(i) excessively large areas of the mine perimeter will be disturbed by proposed methods for highwall reduction or regrading of box cut spoils; or

(ii) material shortages in the area of the final highwall or spoil excesses in the area of the box cut area are likely to preclude effective recontouring.

(o) Final Grading. Final grading shall be kept current with mining operations. In order to be considered current, grading and backfilling shall meet the following requirements unless exceptions are granted ~~by the department pursuant subsection (9) and (10) of this rule:~~

(i) on lands affected by area strip mining, the grading and backfilling shall not be more than two spoil ridges behind the pit being worked unless otherwise approved by the department. Rough backfilling and grading shall be completed within 180 days following coal removal. The department may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis, that additional time is necessary. and

(ii) grading and backfilling of other types of subject excavations shall be kept current as departmental directives dictate for each set of field circumstances.

(p) Contouring. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement

shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

(2) Highwall Reduction. Highwalls shall be eliminated and the steepest slope of the reduced highwall shall be at the most moderate slope possible, but in no case greater than 20 degrees from the horizontal or at whatever slope is necessary to achieve a minimum static safety factor of 1.3. The department may specify a lesser slope. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank.

(3) Adjacent Strip and Underground Mining Operations. An operator who conducts a strip or underground mining operation adjacent to any underground or strip mining operation, respectively, shall comply with the following:

(a) a 500-foot barrier pillar of coal shall be maintained between the strip and underground mining operations in any one seam. The department, the Mine Safety and Health Administration, and the Montana Safety and Health Bureau, however, may approve a lesser distance after a finding by the department that mining at a lesser distance will result in:

(i) improved coal resources recovery;

(ii) abatement of water pollution; or

(iii) elimination of hazards to the health and safety of the public.

(b) The vertical distance between strip and underground mining operations working separate seams shall be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.

(4) Slides and Other Damage.

(a) An undisturbed natural barrier, as approved by the department, shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the department as is needed to assure stability. The barrier shall be retained in place as needed to prevent slides and erosion.

(b) At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the environment, the person who conducts the strip or underground mining activities shall notify the department by the fastest available means and comply with any remedial measures required by the department.

(5) Buffer Zones.

(a) All mining activities, including highwall reduction and related reclamation, shall cease at least 100 feet from a property line, permanent structure, unmineable or unreclaimable

steep or precipitous terrain, or any area determined by the department to be of unique scenic, historical, cultural, or other unique value. If special values or problems are encountered, the department may modify buffer zone requirements.

(b) The transition from undisturbed ground shall be blended with this disturbed area to provide a smooth transition in topography.

(6) Monitoring for Settlement. The department may require the operator to monitor settling of regraded areas. The results of these studies may be used to alter reclamation, spoiling and grading techniques to alleviate uneven settling problems on future areas to be mined.

(7) Disposal of Spoil. Spoil not required to achieve the approximate original contour shall be transported to and placed in a controlled (engineered) manner in disposal areas other than the mine workings or excavations only if all the following conditions, in addition to the other requirements of the Act and this rule are met.

(a) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills and for reclamation and revegetation compatible with the natural surroundings.

(b) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the department. Fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(c) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(d) Leachate and surface runoff from the fill shall not degrade surface of groundwaters or exceed the effluent limitations of Rule VII.

(e) The disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the underdrains in such a manner that infiltration of the water into the spoil pile will be prevented.

(f) All organic material shall be removed from the disposal area, and the topsoil must be removed, segregated, and redistributed or stockpiled according to the provisions of Rule VIII, before the material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(g) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of Rule VII. All disturbed areas,

including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(h) The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure a long-term static safety factor of 1.5. The final configuration of the fill must be suitable for postmining land uses except that no depressions or impoundments shall be allowed on the completed fill. Terraces shall not be constructed unless approved by the department to prevent erosion and ensure stability.

(i) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage and surface drainage systems, and proper placement and compaction of fill materials, and revegetation. The registered engineer or other qualified professional specialist shall provide a certified report within two weeks after each inspection that the fill has been constructed as specified in the design approved by the department. A copy of the report shall be retained at the mine site.

(j) Coal processing wastes shall not be disposed of in excess spoil fills. Such material will be disposed of in the mine excavations only upon the prior approval of the department.

(k) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall include the effect of underground mine workings, if any, upon the stability of the structure.

(l) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the department and Mine Safety Health Administration upon the basis of a plan submitted under Rule XVIII.

(m) Excess spoil shall not be disposed of in valley fills or head-of-hollow fills.

(n) Any spoil pile or piles, or parts thereof, may be required by the department to be retained in an unreclaimed condition to be returned to the mine workings at a later date in order to achieve approximate original contour.

(8) Cessation of Operations.

(a) Temporary.

(i) Each person who conducts strip or underground mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit.

Temporary abandonment shall not relieve a person of his obligation to comply with any provisions of the approved permit.

(ii) Before temporary cessation of mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct strip or underground mining ~~activities~~ operations shall submit to the department a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

(b) Permanent.

(i) Persons who cease strip or underground mining ~~activities~~ operations permanently shall close or backfill and otherwise permanently reclaim all affected areas, in accordance with this rule and the permit approved by the department.

(ii) All surface or underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the department as suitable for the post-mining land use or environmental monitoring, shall be removed and the affected land reclaimed.

(iii) All backfilling and grading shall be completed within ninety (90) days after the department has determined that the operation is completed or that a prolonged suspension of work in the area will occur. Final pit reclamation shall proceed as close behind the coal loading operation as the frequency and location of ramp roads, the use of overburden stripping equipment in highwall reclamation, and other factors may allow.

(9) Coal Processing Waste Fires. Coal processing waste fires shall be extinguished by the person who conducts the strip or underground mining ~~activities~~ operations in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(10) Signs and Markers.

(a) Specifications. All signs required to be posted by the operator shall be of a standard design throughout the operation that can be seen and read easily and shall be made of durable material. Signs shall not be placed where their

visibility is reduced by parked vehicles, splashed mud, or other causes. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes, where applicable.

(b) Mine and Permit Identification Signs. Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits. Such signs shall not be removed until after release of all bonds.

(c) Perimeter Markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers or by other means approved by the department. Such markers will be so designed that their visibility will not be reduced in general by operation of equipment, weather effects, and other normally occurring effects. The markers shall be in place before the start of any mining activities.

(d) Buffer Zone Markers. Buffer zones shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone, and shall be separate and distinct from perimeter markers.

(e) Blasting Signs. If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously along the edge of any blasting area that comes within 50 feet of any road within the permit area, or within 100 feet of any public road right-of-way. The operator shall also:

(i) conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes; and

(ii) place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning! Explosives in Use", which clearly explain the blast warning and all clear signals that are in use and which explain the marking of blast areas and charged holes within the permit area.

(f) Topsoil Markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled, the stockpiled materials shall be clearly marked. Markers shall remain in place until the material is removed.

RULE V ROADS, RAIL LOOPS AND OTHER TRANSPORTATION AND SUPPORT FACILITIES (1) General Requirements. (a) Haul roads through permitted areas shall be allowed provided that their presence does not delay or prevent recontouring and revegetation on immediately adjacent spoils, unless upon request of the applicant or permittee the department finds in writing that a delay in recontouring and revegetation of immediately adjacent spoils will result in better reclamation.

(b) Roads shall meet the following requirements:

(i) (A) No more than two ramp roads per mile of active pit being mined shall be allowed. Fractional portions of ramp roads resulting from active pit lengths of uneven mileage will be counted as an additional ramp road allowable. (Example: 2.1 (active pit mile length) x 2 (ramp roads/mile) = 4.2 (ramp roads) or 5 ramp roads allowable). The department may authorize an additional ramp road;

(B) Ramp roads, beginning from the spoil edge of the pit being worked, shall be engineered so as to exhibit an overall 7 percent grade, or steeper, until topping on graded spoils. As each new pit is excavated, the ramp roads shall be regraded, as soon as possible, so as to remain at an overall 7 percent or steeper grade from the spoil side of the new pit. Ramp road renovation grading shall allow for topsoiling and revegetative activities to proceed during prime revegetative seasons. Lesser slopes may be allowed if the department makes a written determination that 7 percent slopes would cause safety problems or hamper successful reclamation;

(ii) Access and haul roads constructed shall be graded, constructed, and maintained in accordance with the following requirements:

(A) no sustained grade shall exceed 8 percent (4.6o);

(B) the maximum pitch grade shall not exceed 12 percent (6.8o) for greater than 300 feet;

(C) there shall not be more than 300 feet of maximum pitch grade for each 1000 feet;

(D) the grade on switchback curves shall be reduced to less than the approach grade and shall not be greater than ten percent (5.7°);

(E) ~~a~~cut slopes shall not be more than ~~1v:2h~~ 1v:1.5h ~~(26.6°)~~ in soils or ~~1v:1/2h~~ 1v:0.25h ~~(63.4°)~~ in rock;

(F) All grades referred to shall be subject to a tolerance of plus or minus one-half degrees of angular measurement. Linear measurements shall be subject to a tolerance of 10 percent of measurement;

(G) all cut and fill slopes resulting from construction of access roads, railroad loops, or haul roads shall be top-soiled and revegetated, or otherwise stabilized, at the first seasonal opportunity. The provisions of subsection (4) of this rule for the prevention of contamination of topsoil shall be observed; and

(H) roads shall have horizontal alignment as consistent with the existing topography as possible, and shall provide the alignment required to meet the performance standards of this rule. The alignment shall be determined in accordance with the anticipated volume of traffic and weight and speed

of vehicles to be used. Horizontal and vertical alignment shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(d) No roads or railroad loops shall be built with or surfaced with refuse coal, acid-producing or toxic materials. ~~or with any material which will produce a concentration of suspended solids in surface drainage.~~

(e) All appropriate methods shall be employed by the operator to prevent loss of haul or access road surface material in the form of dust.

(f) Immediately upon abandonment of any road or railroad loop, the area shall be ripped, plowed, seacrificed, and graded to approximate original contour, including hauling away and proper disposal of embankment and fill materials, where necessary. All bridges and culverts shall be removed. The area shall be topsoiled, conditioned and seeded and adequate measures taken to prevent erosion by such means as cross drains, dikes, water bars, or other devices. Such areas shall be abandoned in accordance with all provisions of the Act and of this subchapter. Upon completion of mining and reclamation activities, all roads shall be closed and reclaimed unless retention of the road is approved as part of the approved postmining land use pursuant to Rule XII and the landowner requests in writing and the department concurs that certain roads or specified portions thereof are to be left open for further use. In such event, necessary maintenance must be assured by the operator or landowner and drainage of the road systems must be controlled according to the provisions of this rule.

(2) Road Location.

(a) The location of a proposed road or railroad loop shall be identified on the site by visible markings at the time the reclamation and mining plan is preinspected and prior to the commencement of construction. No such construction shall proceed along dry coulees, or intermittent or perennial drainageways, unless the operator demonstrates that no off-site sedimentation will result, or in wet, boggy, steep, or unstable areas.

(b) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless

they are specifically approved by the department as temporary routes across dry streams that will not adversely affect sedimentation or fish, wildlife, or related values and that will not be used for hauling. Other stream crossings shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph shall be construed to prohibit relocation of stream channels in accordance with Rule VII.

(3) Embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) all vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be allowed beneath or in any embankment;

(b) where an embankment is to be placed on side slopes exceeding lv:5h (11.3°), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of 10 feet in width and shall extend a minimum of 2 feet below the toe of the fill;

(c) material containing by volume less than 25 percent of rock larger than 6 inches in greatest dimension shall be spread in successive uniform layers not exceeding 12 inches in thickness before compaction;

(d) where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in 12-inch layers impossible under paragraph (3)(c) above, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed 36 inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, and so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of paragraph (3)(c);

(e) each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Loads of material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent;

(f) embankment layers shall be compacted as necessary to ensure that the embankment is adequate to support the

anticipated volume of traffic and weight and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structural and foundation analysis shall be performed to establish design standards for embankment stability appropriate to the site. Publications of the American Association of State Highway and Traffic Officers (AASHTO), including AASHTO T-99, T-180, T-91, and the modified AASHTO test, or other specifications generally recognized by transporation engineers as adequate for design of highway embankments, shall be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles to be used. Compaction effort shall be adequate to achieve the degree of compaction required. No lift shall be placed on a layer until the design density is achieved throughout the layer. AASHTO specifications such as T-99, T-180, the modified AASHTO test, or other comparable specifications approved by the department shall be used as guidelines for the determination of the maximum dry density for granular materials;

(g) material shall be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction;

(h) embankment slopes shall not be steeper than 1v:2h (26.6o), except that where the embankment material is a minimum of 85 percent rock, slopes shall not be steeper than 1v:1.35h (36.5o) if it has been demonstrated to the department that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of paragraph (3)(d);

(i) the minimum safety factor for all embankments shall be 1.5 under any condition of loading likely to occur, or such higher factor as the department requires;

(j) the road surface shall be sloped toward the ditch line at a minimum rate of one-quarter inch per foot of surface width, or crowned at a minimum rate of one-quarter inch per foot of surface width;

(k) all material used in embankments shall be suitable for use under paragraphs (3)(a)-(h) above. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material, natural soils containing organic matter, or any other material considered unsuitable by the department for use in embankment construction;

(l) topsoil or other suitable material as determined by the department shall be placed on embankment slopes to

aid in establishing vegetation or to minimize erosion or both. Material depth shall be adequate to support vegetation or to prevent erosion or both. Measures in lieu of topsoiling and vegetation may be proposed to the extent that they can be shown to reduce erosion and prevent the contamination of topsoil; and

(m) temporary erosion-control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(4) Topsoil Removal.

(a) Before initiation of construction or reconstruction of a road, railroad loop, or an embankment for same, topsoil and other materials as determined under the provisions of this subchapter shall be removed from the area to be occupied by the road or loop and stored according to the provisions of Rule VIII.

(b) Topsoil shall be stripped for a distance of 10 feet, or other distance as approved by the department, from the edge of any road, road ditch, loop, or embankment to prevent contamination of topsoil by road or embankment materials, by dust, or by cleaning operations. Any measures necessary for the prevention of contamination of topsoil such as proper maintenance of roads and ditches, shall be undertaken by the operator.

(5) Hydrologic Impact of Roads.

(a) General. Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, diversions, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable state or federal law.

(b) Drainage ditches shall be constructed on both sides of any through-cut, and the inside shoulder of a cut-fill section, with ditch relief cross-drains being spaced according to grade. Water shall be intercepted before reaching a switch-back or large fill and shall be drained off or released below the fill through conduits or in riprapped channels and shall not be discharged onto the fill. Drainage ditches shall be placed at the toe of all cut slopes formed by the construction of roads. Drainage structures shall be constructed in order to cross a stream channel and shall not affect the flow or sediment load of the stream. Ditches shall be sloped sufficiently to allow them to drain.

(c) (i) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches,

water barriers, cross-drains, and ditch-relief drainages. For access and haul roads that are to be maintained for more than six months, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a ten-year, 24-hour precipitation event without a ~~head~~ impounding ~~of~~ water at the entrance. Culverts with an end area of greater than 35 square feet, and bridges with a span of 30 feet or less shall be designed to safely pass a 20 year, 24-hour precipitation event. All other bridges shall be designed to safely pass the 100-year, 24-hour precipitation event or greater event as specified by the department. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Culverts shall be covered by compacted fill to a minimum depth of 1 foot. Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

(B) With prior written approval of the department, culverts shall be spaced at intervals of from 300 feet for roads of slope greater than 10 percent to 1000 feet for level roads, depending on the road slope. The department shall require a lesser interval if necessary to prevent erosion and may allow a greater interval if erosion will not be increased.

(ii) Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the department in accordance with Rule VII. The department may approve alterations and relocations only if:

(A) the natural channel drainage is not blocked;

(B) no significant damage occurs to the hydrologic balance; and

(C) there is not adverse impact on adjoining landowners.

(iii) Drainage structures are required for stream channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration and aquatic habitat or related environmental values.

(iv) Vegetation shall not be cleared for more than the width necessary for road and associated ditch or road construction, to serve traffic needs, and for utilities.

(6) Surfacing. Access and haul roads shall be surfaced with a durable material approved by the department. Toxic- and acid-forming substances shall not be used.

(7) Maintenance.

(a) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing, and replacement of paving materials, such that the required design standards of the roads shall be met throughout the life of the operation.

(b) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(c) Roads or embankments severely damaged by events such as floods, earthquakes, or equipment damage shall not be used until reconstruction of damaged road or embankment elements. The reconstruction shall be completed as soon as practicable after the damage has occurred.

(8) Impacts of Other Transport Facilities. Other transportation facilities within the area of land affected, including railroad spurs, sidings, surface conveyer systems, chutes, aerial tramways, pipelines, powerlines, and other transport facilities shall be designed, constructed, reconstructed, maintained, and reclaimed to:

(a) control diminution or degradation of water quality and quantity;

(b) control and minimize diminution of water quality and quantity;

(c) control and minimize air pollution;

(d) prevent damage to public and private property; and

(e) prevent, to the extent possible using the best technology currently available:

(i) damage to fish, wildlife, and related environmental values; and

(ii) additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(9) Other Support Facilities. (a) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities, coal storage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the best technology currently available:

(i) damage to fish, wildlife, and related environmental values; and

(ii) additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitation of state or federal law.

(b) All strip or underground mining ~~activities~~ operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the department.

(c) No support facility may be constructed in a manner or located other than as indicated in the approved permit application or site approved by the department.

RULE VI USE OF EXPLOSIVES (1) General Requirements.

(a) Each person who conducts strip or underground mining operations shall comply with all applicable state and federal laws in the use of explosives.

(b) Blasts that use more than 5 pounds of explosive or blasting agent shall be conducted according to the schedule required by paragraph 3 of this rule.

(c) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certification.

(2) Pre-Blasting Survey.

(a) On the request to the department by a resident or owner of a dwelling or structure that is located within one-half mile of any part of the permit area, the person who conducts the strip or underground mining operations shall promptly conduct a pre-blasting survey of the dwelling or structure and promptly submit a report of the survey to the department and to the person requesting the survey. If a structure is renovated or added to, subsequent to a pre-blast survey, then upon request to the department a survey of such additions and renovations shall be performed in accordance with this subsection.

(b) The survey shall determine the condition of the dwelling or structure and document any pre-blasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and readily available data. Special attention shall be given to the pre-blasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(c) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the department. If the person requesting the survey disagrees with the results of the survey, he or she may notify, in writing, both the permittee and the department of the specific areas of disagreement.

(3) Blasting Schedule.

(a) Publication.

(i) Each person who conducts strip or underground mining operations shall publish a blasting schedule at least 10 days, but not more than 20 days, before beginning a blasting program in which blasts that use more than 5 pounds of explosive or blasting agent are detonated. The blasting schedule shall be published once in a newspaper of general circulation in the locality of the blasting site. ~~once a week for four consecutive weeks.~~

(ii) Copies of the schedule shall be distributed by mail to local governments and public utilities and by mail or delivered to each residence within one mile of the permit area described in the schedule. For the purposes of this subsection, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas and coal preparation or loading facilities, if blasting is not conducted in these areas. Copies sent to residences shall be accompanied by information advising the owner or resident how to request a pre-blasting survey.

(iii) The person who conducts the strip or underground mining operations shall republish and redistribute the schedule by mail at least every 12 months.

(b) Contents.

(i) A blasting schedule shall not be so general as to cover the entire permit area or all working hours, but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

(ii) The blasting schedule shall contain at a minimum:

(A) identification of the specific areas in which blasting will take place. Each specific blasting area described shall be reasonably compact and not larger than 300 acres;

(B) dates and time periods when explosives are to be detonated. These periods shall not exceed an aggregate of 4

hours in any one day;

(C) methods to be used to control access to the blasting area;

(D) types of audible warnings and all-clear signals to be used before and after blasting; and

(E) a description of unavoidable hazardous situations referred to in (4)(a)(ii) which have been approved by the department for blasting at times other than those described in the schedule.

(c) Public Notice of Changes to Blasting Schedules.

(i) Before blasting in areas or at times not in a previous schedule, the person who conducts the strip or underground mining operations shall prepare a revised blasting schedule according to the procedures of this subsection. Where a schedule has previously been provided to the owner or residents under (2)(a) with information on requesting a pre-blast survey, the notice of change need not include information regarding pre-blast surveys.

(ii) If there is a substantial pattern of non-adherence to the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the department may require that the person who conducts the strip or underground mining operations prepare a revised blasting schedule according to the procedures in paragraph (i) above.

(4) Surface Blasting Requirements.

(a) All blasting shall be conducted between sunrise and sunset.

(i) The department may specify more restrictive time periods, based on public requests or other relevant information, according to the need to adequately protect the public from adverse noise or seismic disturbances.

(ii) Blasting may, however, be conducted between sunset and sunrise if:

(A) a blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated;

(B) in addition to the required warning signals, oral notices are provided to persons within one-half mile of the blasting site; and

(C) a complete written report of blasting at night is filed by the person conducting the ~~surface~~ mining activities with the department not later than 3 days after the night blasting. The report shall include a description in detail of the reasons for the delay in blasting including why the blast could not be held over to the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast record required by subsection (6) of this rule.

(b) Blasting shall be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations, previously approved by the department in the permit application, where operator or public safety require unscheduled detonation.

(c) Warning and all-clear signals of different character that are audible at all points within a range of one-half mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half-mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each person who conducts strip mining ~~activities~~ operations shall maintain signs in accordance with Rule IV.

(d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Blasting shall not eject flyrock onto property outside the permit area. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the ~~surface~~ mining ~~activities~~ operations has reasonably determined:

(i) that no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(ii) that access to and travel in or through the area can be safely resumed.

(e) (i) Airblast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the person who conducts the strip or underground mining operations and is not leased to any other person. If a building owned by the person conducting ~~surface~~ mining ~~activities~~ operations is leased to another person, the lessee may sign a waiver relieving the operator from meeting the air-blast limitations of this paragraph.

Lower Frequency limit of measuring system, Hz (+3dB)	Maximim level in dB
0.1 Hz or lower - flat response	135 peak.
2 Hz or lower - flat response	132 peak.
6 Hz or lower - flat response	130 peak.
C-weighted, slow response	109 C.

(ii) In all cases except the C-weighted, slow-response, the measuring systems used shall have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) S1. 4-1971 specifications. The ANSI S1.4-1971 is hereby incorporated by reference as it exists on the date of adoption of this rule. Copies of this publication are on file with the department.

(iii) The person who conducts blasting may satisfy the provisions of this section by meeting any of the four specifications in the chart in paragraph (4)(e)(i) above.

(iv) The department may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

(f) Except where lesser distances are approved by the department, based upon a pre-blasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted within:

(i) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(ii) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(g) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under paragraph (4)(d) of this ~~section.~~ rule.

(h) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(i) In all blasting operations, except as otherwise authorized in this subsection, the maximum peak particle velocity shall not exceed 1 inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three measurements. The department may reduce the maximum peak velocity allowed, if it determines that a lower standard is required because of density of population or

land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(j) If blasting is conducted in such a manner as to avoid adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of paragraph (i) of this subsection shall not apply at the following locations:

(i) at structures owned by the person conducting the mining activity, and not leased to another party; and

(ii) at structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the department prior to blasting.

(k) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in paragraph (l)(i) of this subsection. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the 1-inch-per-second limit.

(l) (i) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula $W = (D/60)^2$ where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D = the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(ii) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D)	Maximum weight in pounds (W)
300	25
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1.200	400
1,300	469
1,400	544
1,500	625

Distance, in feet (D)	Maximum weight in pounds (W)
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,403
4,000	4,444
4,500	5,625
5,000	6,944

(5) Seismograph Measurements.

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of 1 inch per second is not exceeded, the equation in paragraph (4)(l)(i) need not be used. If that equation is not used by the person conducting the ~~strip or underground~~ mining ~~activities~~, operations a seismograph record shall be obtained for each shot.

(b) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the department approve the use of a modified equation where the peak particle velocity of 1 inch per second would be exceeded.

(c) The department may require a seismograph record of any or all blasts and may specify the location at which such measurements are to be taken.

(6) Records of Blasting Operations. A record of each blast, including seismograph records, shall be retained for at least 3 years and shall be available for inspection by the department and the public on request. The record shall contain the following data:

(a) name of the operator conducting the blast;

(b) location, date, and time of blast;

(c) name, signature, and license number of blaster-in-charge;

(d) direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either:

(i) not located in the permit area; or
(ii) not owned nor leased by the person who conducts the ~~surface~~ mining activities.
(e) weather conditions, including temperature, wind direction, and approximate velocity;
(f) type of material blasted;
(g) number of holes, burden, and spacing;
(h) diameter and depth of holes;
(i) types of explosives used;
(j) total weight of explosives used;
(k) maximum weight of explosives detonated within any 8-millisecond period;
(l) maximum number of holes detonated within any 8-millisecond period;
(m) initiation system;
(n) type and length of stemming;
(o) mats or other protections used;
(p) type of delay detonator and delay periods used;
(q) sketch of the delay pattern;
(r) number of persons in the blasting crew;
(s) seismographic records, where required, including the calibration signal of the gain setting and:
(i) seismographic reading, including exact location of seismograph and its distance from the blast;
(ii) name of the person taking the seismograph reading; and
(iii) name of the person and firm analyzing the seismographic record.

RULE VII HYDROLOGY (1) General Requirements. (a) General provisions. The permittee shall plan and conduct mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from strip or underground mining and reclamation operations, both on- and off-site.
(b) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable federal and state statutes and regulations are not violated.
~~(c) Waters within the public domain of the state that possess a higher quality than that established on the effective date of established standards shall be maintained at their present high quality consistent with the powers granted to the board. Such high quality waters shall not be lowered in quality unless and until it is affirmatively demonstrated to the board through public hearing, that such a change is justifiable as a result of necessary economic or social~~

~~development-and-that-the-change-will-not-adversely-affect the-present-and-future-uses-of-such-waters.--In-implementing this-policy-as-it-relates-to-interstate-streams,-the-department-of-Health-and-Environmental-Sciences-shall-be-provided with-such-information-as-will-enable-it-to-discharge-its responsibilities-under-Chapter-5-of-Title-75-MCA.~~

(c)~~(d)~~ Minimization of Pollution.

(i) The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize mining and reclamation practices that will prevent or minimize water pollution. Diversions of drainages shall be used in preference to the use of water treatment facilities.

(ii) Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through land shaping, diverting runoff, achieving quickly germinating and growing stands of temporary vegetation, regulating channel velocity of water, lining drainage channels with rock or vegetation, mulching, selectively placing and sealing acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas.

(d)~~(e)~~ If pollution can be controlled only by treatment, the permittee shall operate and maintain the necessary water-treatment facilities for as long as treatment is required. The department may specify which practices, used to minimize water pollution, may be used on a permanent basis.

(2) Permanent Sealing of Drilled Holes.

~~(a)--General-Requirements.--The-operator-shall-use appropriate-techniques-to:~~

~~(i)--prevent-the-escape-of-oil-or-gas-from-all-drill holes;-and~~

~~(ii)--prevent-contamination-of-state-waters-from-oil-or gas-~~

~~(b)~~ When no longer needed for its intended use as approved by the department and if not transferred as a water well under subsection (14), each exploration hole, other drilled hole, borehole or well shall be abandoned according to the procedures described in Rule XIX (6). ~~and-(10)-and-the following-procedures:~~

~~(i)--no-cuttings-shall-be-placed-in-the-hole-other-than the-upper-8-feet.--Cuttings-shall-be-disposed-of-according to-Rule-XIX-(6);~~

~~(ii)-all-casing-shall-be-cut-off-2-feet-below-ground surface-prior-to-abandonment-of-the-hole;~~

~~(iii)--under-circumstances-where-circulation-is-lost-to the-formation,-a-bentonite-mixture-(according-to-paragrapy (d)-of-this-subsection-will-not-stand-in-the-hole,-or-~~

~~artesian-flow-cannot-be-stopped-by-the-column-of-bentonite (prescribed-in-paragraph-(b)-of-this-subsection), a-homogenous cement-mixture-shall-be-slurried-into-the-hole-from-the bottom-to-within-8-feet-of-the-ground-surface.--A-seismic plug-shall-be-placed-in-the-hole-and-the-remainder-will-be filled-with-cuttings-and-topsoil-and-a-wooden-stake-shall-be placed-to-mark-the-center-of-the-hole-designating-the operators- and-the-hole-identification-number; and~~

~~(iv)--under-circumstances-other-than-in-paragraph-(b)(iii) above-drilled-holes-shall-be-abandoned:~~

~~(A)--from-the-bottom-to-within-8-feet-of-the-ground surface-with-a-homogenous-fluid-containing-water-and-a-high quality-sodium-bentonite-with-no-toxic-nor-degradable-additives, with:~~

~~(I)--an-A.P.I.-filtrate-volume-of-not-more-than-12.0 cm3-and-a-cake-thickness-not-more-than-3/32's-of-an-inch based-on-a-30-minute-filtration-test-at-100-P.S.I.-and ambient-temperature; and~~

~~(II)--an-A.P.I.-10-minute-gel-strength-of-not-less-than 20-lb./100-feet;~~

~~(B)--by-placing-a-seismic-plug-8-feet-below-the-ground surface, using-cuttings-and-topsoil-to-fill-the-remainder-of -the-hole, and-placing-a-wood-stake, designating-the-operator's name-and-the-hole-identification-number, to-mark-the-center of-the-hole.~~

(3) Water Quality Standards and Effluent Limitations.

(a) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds ~~or treatment facilities~~ before leaving the permit area. ~~Additional~~ Treatment facilities may be required by the department if required to meet the effluent limitations in (f). Additional treatment facilities may be required after commencement of the operation if conditions arise that were not anticipated at the time of the permit application.

(b) Sedimentation ponds and treatment facilities shall be maintained until the disturbed area has been restored, the revegetation requirements of Rule IX have been met, the area meets state and federal requirements for the receiving stream, and evidence is provided that demonstrates that the drainage basin has been stabilized to the extent that it was prior to mining, assuming proper management.

(c) The department may grant exemptions from this requirement only when:

(i) the disturbed drainage area within the total disturbed area is small; and

(ii) the permittee shows that sedimentation ponds are not necessary to meet the effluent limitations of ~~this~~

paragraph (f) below and to maintain water quality in downstream receiving waters.

(d) For purpose of this subsection only, "disturbed area" shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this subsection and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this ~~paragraph~~ subsection shall be constructed in accordance with subsection (7) of this rule in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this ~~paragraph~~ subsection.

(e) Sedimentation ponds required by this subsection shall be constructed in accordance with subsection (7) of this rule in appropriate locations before beginning any strip or underground mining operations in the drainage area to be affected.

(f) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current strip or underground mining operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the permit area.

(i) Discharges of water from areas disturbed by strip or underground mining ~~activities~~ operations shall be made in compliance with all federal and state laws and regulations and, at a minimum, the following numerical effluent limitations:

Effluent limitations in milligrams per liter (mg/l) except for pH

Effluent characteristics[1]	Maximum allowable[2]	Average of daily values for 30 consecutive discharge days[2]
Iron, total[5]	7.0	3.5
Manganese, total[3].	4.0	2.0
Total suspended[6] solids	45	30
pH[4].	Within range of 6.0 to 9.0	

[1]To be determined according to collection and analytical procedures adopted by the Environmental Protection Agency's regulations for waste-water analyses (40 CFR 136).

[2]Based on representative sampling.

[3]The manganese limitations shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR 434).

[4]Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the department may allow the pH level in the discharge to exceed, to a small extent, the upper limit of 9.0, in order that the manganese limitations will be achieved.

[5]Discharges of iron from new sources, as defined under 40 CFR Section 434.11(i), shall be limited to 6.0 mg/l (maximum allowable) and 3.0 mg/l (average of daily values for 30 consecutive discharge days).

[6]The department will accept turbidity measurements to monitor T.S.S. if the permittee can demonstrate strong relationship between the two parameters.

(ii) All discharges must register net positive alkalinity (total alkalinity must exceed total acidity).

(g) A discharge from the disturbed areas is not subject to the effluent limitations of this section, if:

(i) the discharge is demonstrated by the permittee to have resulted from a precipitation event equal to or larger than a 10-year, 24-hour precipitation event; and

(ii) the discharge is from facilities designed, constructed, and maintained in accordance with this rule.

(h) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all federal and state laws and regulations and the limitations of this rule. If the pH of water to be discharged from the disturbed area is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the department shall be installed, operated, and maintained. The department may authorize the use of a manual system, if it finds that:

(i) flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and

(ii) timely and consistent treatment is ensured.

(4) Reclamation of Drainages.

(a) General Requirements. Drainage design shall emphasize channel and floodplain dimensions that approximate the premining configuration and that will blend with the

undisturbed drainage above and below the area to be reclaimed. The average stream gradient shall be maintained with a concave longitudinal profile and the channel and floodplain shall be designed and constructed to:

(i) establish or restore the channel to its natural meandering pattern with a geomorphically acceptable gradient as determined by the department;

(ii) allow the drainage channel to remain in dynamic equilibrium with the drainage basin system without the use of artificial structural controls unless approved by the department;

(iii) improve upon unstable conditions which existed in the drainage system prior to mining where practicable in consultation with and upon approval by the department;

(iv) provide separation of flow between adjacent drainages and safely pass the runoff from a 24-hour precipitation event with a 100-year recurrence interval, or larger event as specified by the department;

(v) provide for the long-term stability of the landscape;

(vi) establish or restore the stream to include a diversity of aquatic habitats (generally a series of riffles and pools) where appropriate, that approximates the premining characteristics; and

(vii) restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream in order to comply with Rule IX.

(b) Alternate Techniques. ~~Drainage reclamation techniques, other than those in paragraphs (i) and (iii) above, which meet the intent of this subsection, may be proposed to the department and utilized if approved.~~ Alternate drainage reclamation techniques may be proposed in place of (a)(i), (a)(iii), and the stream gradient and longitudinal profile requirements of (a) and may be utilized if approved. The Department may not approve alternate techniques unless they are as environmentally protective as ~~(i) and (iii)~~ the techniques they replace. No alternative to (a)(ii), (iv), (v), (vi), or (vii) may be proposed or accepted.

(5) Temporary and Permanent Diversion of Overland Flow, Through Flow, Shallow Groundwater Flow, and Ephemeral, Intermittent and Perennial Streams.

(a) General Requirements.

(i) Diversion of flow, if required or approved by the department, shall be constructed for the purpose of diverting water away from disturbed areas, to minimize erosion, to reduce the volume of water requiring treatment and to prevent or remove water from contact with acid- or toxic-forming materials.

(ii) No diversion shall be located so as to increase the potential for landslides nor shall diversions be constructed or operated to allow entry of diverted water into underground mines.

(iii) Diversions shall not be constructed to pass large flow events into an adjacent drainage channel that would result in excessive erosion in the natural channel. Water in excess of the design event shall be conveyed ~~over a~~ in a stable manner ~~spillway and allowed to flow to a collection point where the water can be pumped into a~~ to an appropriate treatment facility in order to meet effluent limitations before passing off the permit area.

(iv) Diversions shall be designed, constructed and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available.

(v) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with Rule IV.

(vi) Topsoil shall be handled in compliance with Rule VIII.

(b) Temporary Diversions.

(i) For overland flow, through flow, shallow groundwater flow, and flow from drainage basins of less than one square mile, diversion design shall incorporate the following:

(A) temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 2-year recurrence interval, or a larger event as specified by the department;

(B) channel lining shall be designed using standard engineering practices to safely pass design velocities. Rip-rap shall be maintained as needed following individaul storm events;

(C) freeboard shall be as determined by the department, but no less than .3 feet. Protection shall be provided for areas of transition in non-uniform flow and for critical areas such as curves and swales;

~~B)~~ (D) when the area protected is a critical area as determined by the department, the design free board may be increased;

(E) energy dissipators shall be installed when necessary at streams ~~and~~ where exit velocity of the diversion is greater than that of the receiving stream.

(ii) Ephemeral or intermittent streams with drainage areas larger than one (1) square mile and perennial stream flow from within the permit area may be diverted, if the diversions are approved by the department after making the findings called for in subsection (8) of this rule and if the diversions comply with this subchapter and other state and federal statutes and rules.

(A) When stramflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following requirements:

(I) the longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, basins, and artificial channel roughness structures shall be used in diversions only when approved by the department as being necessary to control erosion;

(II) the combination of channel, bank, and flood-plain configurations shall be adequate to pass safely the peak runoff of a 10-year, 24-hour precipitation event for temporary diversions or larger events specified by the department. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(B) When no longer needed to achieve the purpose for which they were authorized, all temporary diversions shall be removed and the affected land regraded and revegetated, in accordance with Rules IV, VIII and IX. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent over-topping or failure of the facilities. This requirement shall not relieve the person who conducts the strip or underground operation from maintenance of a water treatment facility otherwise required under this rule or the permit.

(c) Permanent Diversion. (i) Permanent diversion structures are defined as those approved by the department to remain after mining.

(ii) All permanent diversions shall meet the requirements of subsection (4) of this rule.

(6) Sediment Control Measures.

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(i) prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(ii) meet the more stringent of applicable state or federal effluent limitations; and

(iii) minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce

erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(i) disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Rule IX;

(ii) stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of Rule IV;

(iii) retaining sediment within disturbed areas;

(iv) diverting runoff away from disturbed areas;

(v) diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(vi) using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

(vii) treating with chemicals.

(7) Sedimentation Ponds.

(a) Sedimentation ponds shall be used individually or in series and shall:

(i) be constructed before any disturbance of the area that will drain into the pond takes place; and

(ii) be located as near as possible to the disturbed area, and out of major stream courses, unless another site is approved by the department, and shall provide a minimum sediment storage volume equal to:

(A) the accumulated sediment volume from the drainage area to the pond for a minimum of 3 years. Sediment storage volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the department;

(B) 0.1 acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount if required by the department. The department may approve a sediment storage volume of not less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area, if the person who conducts the ~~surface~~ strip or underground mining ~~activities~~ operations demonstrates that sediment removed by other sediment control measures is equal to the reduction in the sediment storage volume. All ponds must be accurately surveyed immediately after construction in order to provide a baseline for future sediment volume measurements; or

(C) the accumulated sediment volume necessary to retain sediment for 1 year in any discharge from an underground mine passing through the pond.

(b) The permittee may be required to conduct yearly bathymetric studies of representative sediment ponds in order to provide data for future pone design.

(c) Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event), plus the average inflow from the underground mine if applicable. Theoretical detention time is defined as the average time that the design flow is detained in the pond and is further defined as the time difference between the centroid of the inflow hydrograph and the centroid of the outflow hydrograph for the design event. Runoff diverted under subsection (5) of this rule, away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and onsite sediment control practices shall be considered. Sedimentation ponds shall provide a theoretical detention time of not less than twentyfour hours, or any higher amount required by the department, except as provided under subparagraphs (i), (ii), or (iii) below.

(i) The department may approve a theoretical detention on time of not less than 10-hours, when the person who conducts the strip or underground mining operations demonstrates that:

(A) the improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, inflow and outflow facility locations, baffles to decrease in-flow velocity and shortcircuiting, and changes in surface areas; and

(B) the pond effluent is shown to achieve and maintain applicable effluent limitations.

(ii) The department may approve a theoretical detention time of not less than 10-hours when the person who conducts the strip or underground mining ~~activities~~ operations demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

(iii) The department may approve a theoretical detention time of less than 24 hours to any level of detention time, when the person who conducts the strip or underground mining ~~activities~~ operations demonstrates to the department that a chemical treatment process to be used:

(A) will achieve and maintain the effluent limitations; and

(B) is harmless to biologic life and related environmental values.

(iv) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under subparagraphs (i), (ii), and (iii) of this paragraph (c) shall be included in the permit application.

(d) The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the department and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(e) Each person who conducts strip ~~and~~ or underground mining ~~activities~~ operations shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(f) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this subsection shall not relieve the person from compliance with applicable effluent limitations as contained in subsection (3) of this rule.

(g) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(h) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to 60 percent of the design sediment storage volume. With the approval of the department, additional permanent storage may be provided for sediment and water above that required for the design sediment storage. Upon the approval of the department for those cases where additional permanent storage is provided above that required for sediment under paragraph (a) of this subsection, sediment removal may be delayed until the remaining volume of permanent storage has decreased to 40 percent of the total sediment storage volume provided the theoretical detention time is maintained.

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a ~~10~~ 25-year, 24-hour precipitation event, or larger event specified by the department. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the department.

(j) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum

elevation requirement shall apply at all times, including the period after settlement.

(k) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the department that the material used and the design will ensure against all settlement.

(l) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(m) The combined upstream and downstream side slopes of the settled embankment shall not be less than lv:5h, with neither slope steeper than lv:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(n) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than lv:lh, and the entire foundation surface scarified.

(o) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(p) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the department.

(q) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) an appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the department;

(ii) the embankment shall be designed and constructed with a static safety factor of a least 1.5, or a higher safety factor as designated by the department to ensure stability;

(iii) appropriate barriers shall be provided to control seepage along conduits that extend through the embankment; and

(iv) the criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(r) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(s) The entire embankment including the surrounding areas disturbed by construction shall be stablized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with Rule IX.

(t) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the department, in accordance with 30 CFR 77.216-3. With the approval of the department, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(u) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the vegetation requirements of Rule IX are met, the drainage entering the pond has met the applicable state and federal water quality requirements for the receiving stream and evidence is provided that demonstrates that the drainage basin has stabilized to the extent that it was in the undisturbed state. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with Rule IX unless the pond has been approved by the department for retention as being compatible with the approved postmining land use. If the department approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of subsections (10) and (17).

(8) Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, and diversions shall be controlled by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

(9) Acid- and Toxic-Forming Spoils. Drainage from acid- and toxic-forming spoil into ground and surface water shall be avoided by:

(a) identifying, burying, and treating where necessary, spoil which, in the judgment of the department, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(b) preventing water from coming into contact with acid-forming or toxic-forming spoil in accordance with Rule IV, and other measures as required by the department; and

(c) burying or otherwise treating all acid-forming or

toxic-forming spoil within 30 days after it is first exposed on the mine site, or within a lesser period required by the department. Temporary storage of the spoil may be approved by the department upon a finding that burial or treatment within 30 days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

(10) Permanent and Temporary Impoundments.

(a) Permanent impoundments are prohibited unless authorized by the department upon the basis of the following demonstration:

(i) the quality of the impounded water shall be suitable on a permanent basis for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water-quality standards established pursuant to applicable state and federal laws;

(ii) the level of water shall be sufficiently stable to support the intended use;

(iii) adequate safety and access to the impounded water shall be provided for proposed water users;

(iv) water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(v) the design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act. P.L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77-216(a) are contained in U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs" June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds," October 1978. The technical release and practice standard are hereby incorporated by reference as they exist on March 13, 1979. Technical Release No. 60 and Practice Standard 378 are on file and available for inspection at the Helena office of the department;

(vi) the size of the impoundment is adequate for its intended purposes; and

(vii) the impoundment will be suitable for the approved postmining land use.

(b) Temporary impoundments of water in which the water is impounded by a dam shall meet the requirements of subsection (7) of this rule.

(c) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 3h:1v or lesser slope determined by the department. Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

(d) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.

(e) All embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of Rule IX immediately after the embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of Rule IX.

(f) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified registered professional engineer, in accordance with 30 CFR 77.216-3.

(g) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

(h) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.2.216(a) shall be certified to the department by a qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and maintained to comply with the requirements of this section. All dams and embankments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by either a qualified registered professional engineer or a registered land surveyor. Certification reports shall include statements on:

(i) existing and required monitoring procedures and instrumentation;

(ii) the design depth and elevation of any impoundment waters at the time of the initial certification report or

the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;

(iii) existing storage capacity of the dam or embankment; and

(iv) any other aspects of the dam or embankment affecting stability.

(i) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the department and shall comply with the requirements of this rule. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the department shall approve the plans before modification begins.

(j) If an impoundment does not meet the requirements of paragraphs (10)(g) through (i), the impoundment area shall be regraded to approximate original contour and revegetated

(11) Groundwater Protection.

(a) Mining shall be conducted to control the effects of mine drainage, pits, cuts, and other mining activities and disturbances in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into groundwater flow systems and to prevent adverse impacts on such groundwater flow systems or on approved postmining land uses.

(b) Backfilled materials shall be placed to minimize adverse effects on groundwater flow and quality, to minimize off-site effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to paragraph (13)(a) ~~subsection (13)~~ of this rule to ensure that operations conform to this requirement.

(12) Protection of Groundwater Recharge Capacity.

(a) The disturbed area shall be reclaimed to restore the approximate pre-mining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the groundwater system. The recharge capacity should be restored to support the approved postmining land use, minimize disturbances to the prevailing hydrologic balance in the mine plan and adjacent areas, and provide a rate of recharge that approximates the pre-mining recharge rate. The permittee shall be responsible for monitoring according to paragraph (13) (a) ~~of subsection (13)~~ of this rule to ensure operations conform to this requirement.

(b) The permittee shall be responsible for collecting data or conducting studies as requested by the department to indicate that the recharge capacity of the mined lands can be restored to the approximate pre-mining recharge capacity.

(13) Surface and Groundwater Monitoring.

(a) Groundwater Monitoring.

(i) Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater shall be monitored in a manner approved by the department to determine the effects of strip or underground mining operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the mine plan and adjacent areas. When operations are conducted in such a manner that may affect the groundwater system, groundwater levels and groundwater quality shall be periodically monitored using wells that can adequately reflect changes in groundwater quantity and quality resulting from such operations.

(ii) Monitoring shall include measurements from a sufficient number of wells and physical and chemical analyses of aquifer, overburden, spoil, (and the strata beneath the lowest coal seam to be mined if water level data indicate a potential for the leakage of water through these strata) that are adequate to reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of strip or underground mining ~~activities~~ operations, if necessary, to minimize disturbance of the prevailing hydrologic balance. The department may require the permittee to develop additional wells if needed to adquately monitor the groundwater system. As specified and approved by the department, additional hydrologic tests, such as infiltration tests and aquifer tests, shall be undertaken by the permittee to demonstrate compliance with paragraphs (a)(i) and (ii) of this subsection.

(b) Surface Water Monitoring.

(i) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under Rule II (4) and approved by the department. The department shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:

(A) be adequate to measure accurately and record water quantity and quality of all discharges from the permit area;

(B) in all cases in which analytical results of the sample collections indicate noncompliance with a permit condition or when an applicable standard has occurred, result in the person who conducts the strip or underground mining ~~activities~~ operations notifying the department within 5 days. Where a Montana Pollutant Discharge Elimination System (MPDES) permit effluent limitation noncompliance has occurred, the person who conducts strip or underground mining ~~activities~~ operations shall forward the analytic results concurrently with the written notice of noncompliance;

(C) result in quarterly reports to the department, to

include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the department. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a MPDES permit and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within 90 days or less of sample collection, the following alternative procedure shall be used. The person who conducts the strip or underground mining operations shall submit to the department on the same time schedule as required by the MPDES permit or within 90 days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet MPDES permit requirements.

(ii) Monitoring shall be conducted at appropriate frequencies to measure normal and abnormal variations in concentrations.

(iii) After disturbed areas have been regraded and stabilized according to this rule, the person who conducts strip or underground mining operations shall monitor surface water flow and quality. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements of this rule to minimize disturbance to the prevailing hydrologic balance, that the drainage basin has stabilized to the extent that it was in the undisturbed state, and to attain the approved postmining land use. These data may also provide a basis for approval by the department for removal of water quality or flow control systems and for bond release.

(iv) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(v) The permittee shall provide an analytical quality control program including standard methods of analyses such as those specified in 40 CFR 136.

(14) Transfer of wells.

(a) An exploratory or monitoring well may only be transferred by the person who conducts strip or underground mining ~~activities~~ operations for further use as a water well with the prior approval of the department.

(b) All flowing wells shall be permanently sealed unless approved by the department for other uses. The department may require a written request from a landowner who desires that a drill site be reclaimed as a well.

(c) Upon an approved transfer of a well the transferee shall:

(i) assume primary liability for damages to persons or property from the well;

(ii) plug the well when necessary and prior to abandonment of the well; and

(iii) assume primary responsibility for compliance with Rule XIX subsection (6) ~~(2) of this rule~~ and Rule XX.

(d) Upon an approved transfer of a well, the transferor shall be secondarily liable for the tranferee's obligations under paragraph (c) above until release of the bond.

(15) Water Rights and Replacement. The permittee shall replace the water supply of any owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from ~~an~~ a surface or underground source where such supply has been affected by contamination, diminution, or interruption proximately resulting from strip or underground mine operation by the permittee.

(16) Discharge of Water into an Underground Mine. Surface and groundwaters shall not be discharged, diverted, or allowed to infiltrate into existing underground mine workings.

(17) Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities.

(a) Before abandoning the permit area, the person who conducts the strip or underground mining ~~activities~~ operations shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

(b) All temporary sedimentation ponds, diversions, impoundments and treatment facilities shall be regraded to the approximate original contour and reclaimed prior to abandonment of the permit area.

(18) Stream Buffer Zone.

(a) No land within 100 feet of a perennial stream or a stream with a biological community determined according to paragraph (c) below shall be disturbed by strip or underground mining ~~activities,~~ operations except in accordance with subsection (5) of this rule unless the department specifically authorizes strip or underground mining ~~activities~~ operations closer to or through such a stream upon finding:

(i) that the original stream channel will be restored; and

(ii) during and after the mining, the water quantity and quality from the stream section within 100 feet of the strip or underground mining ~~activities~~ operations shall not be adversely affected.

(b) The area not to be disturbed shall be designated a buffer zone and marked as specified in Rule IV.

(c) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two or more species of arthropods or mulluscan animals which are:

(i) adapted to flowing water for all or part of their life cycle;

(ii) dependent upon a flowing water habitat;
(iii) reproducing or can reasonably be expected to reproduce in the water body where they are found; and
(iv) longer than 2 millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

(19) Wells and Underground Openings: Safety. Each exploration well, other than drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application shall be temporarily sealed before use and temporarily protected during use by barricades, fences, or other protective devices approved by the department. The permittee shall periodically inspect these devices and maintain them in good operating condition.

RULE VIII TOPSOIL (1) Removal. All trees and large shrubs that would interfere with the use of topsoil must be cleared before topsoil removal. All available topsoil shall be removed from the area of land affected before further disturbance occurs. The operator shall segregate surface soil material (A and possibly portions of underlying B and C horizons) from subsurface soil material (B and C horizons) in the salvage, stockpiling and redistribution of topsoil. Using the soil survey information required in Rule II, the operator shall recommend to the department the depths to which it feels each of the two soil lifts for each soil phase and mapping unit should be conducted. The operator shall then proceed in accordance with the department's recommendation. If the operator demonstrates to the satisfaction of the department that such segregation with regard to a specific soil phase or mapping unit is immaterial to the postmining productivity and stability of such soil, segregation shall not be required.

(2) Timing of Removal. Topsoil removal shall precede each step of the mining operation. Topsoil salvage operations will be conducted in a manner and at a time that minimizes erosion, contamination, compaction, and deterioration of the biological, chemical, and physical properties of the topsoil.

(3) Redistribution. Topsoil shall be immediately redistributed according to the requirements of paragraphs (6), (7), and (8) of this rule on areas graded to the approved postmining configuration.

(4) Stockpiling. The topsoil shall be stockpiled if sufficient graded areas are not immediately available for redistribution. Stockpiles of salvaged topsoil shall be located in an area where they will not be disturbed by ongoing mining operations and will not be lost to wind erosion or surface runoff. All unnecessary compaction and contamination of the stockpiles shall be eliminated; and, once stockpiled, the topsoil shall not be rehandled until

replaced on regraded disturbances unless authorized by the department. The operator shall, during the first appropriate season, plant a non-noxious annual or perennial vegetative cover. Proposed stockpile locations shall be indicated on the map submitted as part of an application for a permit.

(5) Limits on Topsoil Removal Area. Where the removal of vegetative material, topsoil or other material may result in erosion that may cause air or water pollution, the department shall limit the size of the area from which topsoil is removed at any one time and specify methods of treatment to control erosion of exposed overburden. Such other measures as the department may require or approve to control erosion shall also be taken.

(6) Treatment of Spoil Surfaces. In final grading, spoil surfaces shall be scarified or otherwise treated as required by the department to eliminate slippage zones that may develop between deposited topsoil and heavy textured spoil surfaces and to promote root and water penetration. The operator shall take all measures necessary to assure the stability of topsoil on graded spoil slopes.

(7) ~~Prevention~~ Minimization of Erosion. Extreme care shall be exercised to guard against erosion during redistribution and thereafter.

(8) Method of Redistribution. Topsoil shall be redistributed in a manner and at a time that:

(a) achieves an approximate uniform thickness consistent with the postmining land uses, contours, and surface water drainage system;

(b) minimizes compaction and erosion of the spoil and topsoil and contamination of the topsoil; and

(c) minimizes deterioration of the biological, chemical, and physical properties of the topsoil.

(9) Roadbeds. In the case of abandoned roads, the roadbeds shall be ripped, disced, or otherwise conditioned before topsoil is replaced. The department may prescribe alternate conditioning and additional methods for the reclamation of abandoned roadbeds.

(10) Reconditioning of Topsoil. If necessary, redistributed topsoil shall be reconditioned by discing, chiseling, or other appropriate methods. Gypsum, lime, fertilizer, or other amendments shall be added in accordance with Rule IX or as stated in the approved reclamation plan. Rates of amendment application shall be determined by soil tests performed by a laboratory using standardized and departmentally approved procedures.

(11) Substitution of Materials. Any application for permit or accompanying reclamation plan which for any reason proposes to use materials other than or along with topsoil

for final surfacing of spoil or other disturbances shall document problems of topsoil quantity or quality. The following requirements must be met before use of material other than topsoil will be allowed:

(a) the permittee must demonstrate that the selected overburden materials or an overburden-topsoil mixture is equally or more suitable for restoring land capability and productivity by the results of chemical and physical analyses. Using standardized and departmentally approved procedures, these analyses shall include determinations of pH, electrical conductivity, sodium adsorption ratio, texture, net acidity or alkalinity, and such other analyses as required by the department. The department also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials;

(b) the chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by certifications from a ~~departmentally-approved~~ qualified laboratory and a qualified soil scientist or agronomist, respectively;

(c) the alternate material must be removed, segregated, and replaced in conformance with this section;

(d) the permittee must demonstrate that the alternate material will not contribute to nor cause pollution of surface or underground waters; and

(e) the permittee must demonstrate that the alternate material will support a diverse cover of predominantly native perennial species consistent with Rule IX.

RULE IX REVEGETATION (1) Establishment. A diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of meeting the criteria set forth in 82-4-233 shall be established on all areas of land affected except water areas and surface area of roads that are approved as a part of the postmining land use. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility when compared with the natural vegetation during each season of the year. For areas designated prime farmland, the requirements of Rule XV shall be met.

(2) Use of Introduced Species. Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution must be approved by the department before implementation. Except for mixtures designed to achieve a quick, temporary and stabilizing cover

or approved as alternate revegetation, the operator shall establish a permanent diverse vegetative cover of predominately native species. Introduced species shall meet applicable state and federal seed or introduced species statutes and shall not include poisonous or potentially toxic species.

(3) Timing. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting after final preparation but shall in no case be more than 90 days after topsoil has been replaced. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate.

(4) Cover Crops and Mulching. All disturbed areas which have been topsoiled will be seeded, as soon as practicable with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established. Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch shall be anchored to the soil surface where appropriate to ensure effective protection of the soil and vegetation. The mulch or the cover crop requirement, or both, may be suspended if the operator demonstrates to the department's satisfaction that they are not needed to control air or water pollution and erosion.

(5) Selection of Species for Wildlife. The permittee shall consult with appropriate state and federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

(6) Method of Revegetation.

(a) General. All revegetation shall be in compliance with the approved reclamation plan and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels.

(b) Seeding. An operator shall establish a permanent diverse vegetative cover of predominantly native species of the same seasonal variety by drill or broadcast seeding or planting, by seedling transplants, by establishing sod plugs, or by other methods. All methods must have prior approval of the department. All seeding shall be done on the contour. When grasses, shrubs, or forbs are seeded as a mixture, they may be drill seeded in separate rows at intervals specified in the standard Soil Conservation Service (SCS) planting guidelines. Such mixed seedings shall be done in this manner wherever necessary to avoid deleterious competition of different vegetal types or to avoid seed distribution problems due to different seed sizes.

(c) Selection of Seed and Seedlings. The operator shall utilize seed and seedlings genotypically adapted to the area when available in sufficient quality and quantity. An operator shall plant seed of a pure and viable nature. Unless otherwise approved by the department, seed shall be at least 90% pure. Seeding rates shall reflect purity and germination percentages.

(7) Planting of Trees. Where tree species are necessary to comply with 82-4-233, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, and regeneration capabilities native to the area. If necessary to increase tree survival, the herbaceous cover may be delayed providing that measures are taken to control air and water pollution and erosion.

(8) Soil Amendments. Soil amendments shall be used as necessary to supplement the soil and to aid in the establishment of a permanent vegetative cover as specified in the approved reclamation plan or as later deemed necessary by the department. Soil amendment application rates shall be based on need as determined by soil analysis.

(9) Management Techniques. An operator shall use any other means necessary to insure the establishment of a diverse and permanent vegetative cover, including but not limited to irrigation, management, fencing, or other protective measures.

(10) Grazing. Livestock grazing ~~will not be allowed~~ may not take place on reclaimed land until the seedlings are established and can sustain managed grazing. The department, in consultation with the permittee and the landowner or in concurrence with the governmental agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(11) Inspection. The department shall annually inspect seeded areas at the end of the growing season to determine species diversity, germination, and seedling take. If the department determines that seedings are unsuccessful in terms of good germination or seedling take, immediate investigati action shall be taken by the operator at the request of the department to determine the cause so that alternatives can be employed to establish the desired permanent vegetative cover at the next seasonal opportunity. The investigative report shall be submitted along with prescribed course of corrective action prior to the next growing season.

(12) Rills and Gullies. When rills or gullies deeper than 9 inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or

otherwise stabilized and the area reseeded or replanted. The department ~~may~~ shall specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

(13) Topsoil Stockpiles. Topsoil stockpiled in compliance with Rule VIII must be seeded or planted with an effective cover of non-noxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions.

(14) Monitoring. The operator shall conduct periodic measurements of vegetation, soils, and water prescribed or approved by the department to identify conditions during the period of liability.

(15) Success of Revegetation.

(a) Reference Areas.

(i) Success of revegetation shall be measured on the basis of unmined reference areas approved by the department. The department shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area. At least one reference area shall be established for each native community type found in the mine area. Two or more community types may be included in one reference area if examples of each type are typical of that community type. More than one reference area ~~will~~ shall be established for types with significant variation due to edaphic factors, past management, size of the permit area, or other factors. Each reference area shall be permanently marked, including reference points for all sampling transects and plots.

(ii) The success of revegetation on operations of less than 100 acres may be based on approved USDA or USDI technical guides, provided that this acreage is not a segment of a larger area proposed for mining.

(iii) Reference areas shall be managed such that they are in a good or better range condition as defined by the SCS. When a good or better range condition has been achieved, the reference area will be grazed at a proper level (50% or less utilization). Where the operator has an approved exclosed reference area, prior to February 3, 1978, grazing ~~will~~ is not ~~be~~ necessary on that reference area. In this case the success of revegetation will be based on the ungrazed reference area. These operators shall initiate a study approved by the department which will demonstrate that the revegetated areas are capable of withstanding grazing pressure. If past management has resulted in a disclimax such that a good or better range condition cannot be attained, the department may approve use of the area in poorer condition.

(iv) The reference area and the revegetated areas will be

grazed at a proper level (50% or less utilization) for at least the last two years of the liability. Vegetation measurements these last two years will be on areas exclosed from grazing by agronomy cages or other systems approved by the department.

(b) General Standards.

(i) Period of Responsibility. The period of responsibility under the performance bond begins when the canopy cover of seeded species is comparable to the approved standard after the last year of seeding, fertilizing, irrigating, or other work. "Comparable to the approved standard" is defined as not significantly less than the approved standard with 90 percent statistical confidence for herbaceous vegetation or 80 percent statistical confidence for trees, shrubs or half-shrubs. In no case will an area be considered comparable if it is less than 90% of the approved standard.

(ii) Period of Evaluation. The revegetated areas and their respective reference areas will be evaluated for at least two consecutive years prior to application for bond release and shall include the last two consecutive years of the bonding period. Application for final bond release may not be submitted prior to the end of the tenth growing season.

(iii) Production. The current annual production shall be measured by clipping each ~~species~~ morphological class on the revegetated area and the reference areas. Weighted productivity ~~will~~ shall be established for the reference areas for comparison to the revegetated area. Weighted productivity ~~will~~ shall be determined for each of the following morphological classes: annual grasses; perennial grasses; annual forbs; biennial and perennial forbs; and shrubs. The production of each class on the revegetated area shall be comparable to the weighted production for that morphological class (except that if one class is composed of undesirable species for both wildlife and livestock, a lesser production in that class will be accepted if it is offset by production above the weighted productivity in another class). Weighted productivity is derived from the following formula:

$$WP = \frac{(P \text{ type } 1 \times A \text{ type } 1) + (P \text{ type } 2 \times A \text{ type } 2) \ldots + (P \text{ type } n \times A \text{ type } n)}{\text{Total area for all types}}$$

Where:

WP = Weighted production of that morpological class

P = Production of that morphological class on the reference area for that type

A = Premine area of that type within the permit boundary

(iv) Canopy Cover. The canopy cover shall be measured for each species on the revegetated area and the reference areas. Weighted canopy cover ~~will~~ shall be established for the reference areas for comparison with the revegetated areas. Weighted canopy cover ~~will~~ shall be determined for each of the following morphological classes: annual grasses; perennial grasses; annual, biennial, and perennial forbs; and shrubs. The canopy cover of each class on the revegetated area shall be comparable to the weighted canopy cover for that morphological class (except that if one class is composed of undesirable species for both wildlife and livestock, a lesser canopy cover in that class will be accepted if it is offset by canopy cover above the weighted canopy cover in another class). Weighted canopy cover is derived from the following formula:

$$WCC = \frac{(C \text{ type } 1 \times A \text{ type } 1) + (C \text{ type } 2 \times A \text{ type } 2) \ldots (C \text{ type } n \times A \text{ type } n)}{\text{Total area for all types}}$$

Where:

WCC = Weighted canopy cover for that morphological class

C = Canopy cover of that morphological class of a given type

A = Premine area of that type

(v) Permanence of Vegetation. During the last two years prior to bond release the vegetation on the revegetated area must meet the following criteria:

(A) it must be composed of at least 51 percent native species (based on production and canopy cover data);

(B) introduced species may be present in a minority (less than 50%) if they have exhibited the ability to survive in the area through adverse climatic conditions, particularly drought.

(vi) Diversity. The number of species occupying 1% or more of the ground cover in the revegetated area ~~will~~ shall be equal to or greater than the number of species occupying 1% or more of the canopy cover in the reference area. A higher percentage may be used if it is shown to the department's satisfaction that the higher percent will meet the intent of section 82-4-233. An average diversity ~~will~~ shall be established by weighting. Weighted diversity is derived from the following formula:

$$WD = \frac{(D \text{ type } 1 \times A \text{ type } 1) + (D \text{ type } 2 \times A \text{ type } 2) + \ldots (D \text{ type } n \times A \text{ type } n)}{\text{Total area for all types}}$$

Where:

WD = Weighted diversity

D = The number of species occupying 1% or more of the ground cover

A = The premining area of that type within the area being evaluated.

(vii) Season of Use. The vegetation area must furnish palatable forage in comparable quantity and quality during the same grazing period as the reference areas. Palatability will be based on the literature and proven by references. Quantity will be based on production measurements.

(viii) Toxicity. Where toxicity to animal consumers is suspected due to the effects of mining, the department may require comparative chemical analyses of the vegetation on the revegetated areas and the reference areas.

(ix) Cropland. Where the premining vegetation was cropland, and it cannot be adequately determined what the precropping vegetation community was, the cropping acreage will be considered to have the same potential to support the same native vegetation as other areas with the same edaphic and topographic characteristics.

(c) Additional Standards for Trees, Shrubs, and Half-Shrubs.

(i) General Standards. Stocking, i.e. the number of stems per unit area, ~~will~~ shall be used to determine the degree to which space is occupied by well distributed, countable trees, or shrubs.

(A) Root crown or root sprouts over 1 foot in height shall count as one toward meeting the stocking requirements for trees and shrubs. Where multiple stems occur, only the tallest stem ~~will~~ shall be counted.

(B) A "countable" tree or shrub means a tree or shrub that can be used in calculating the degree of stocking under the following criteria:

(I) the tree or shrub ~~shall be~~ must have been in place at least 2 growing seasons;

(II) the tree or shrub ~~shall~~ must be alive and healthy; and

(III) the tree or shrub ~~shall~~ must have at least one third of its length in live crown.

(C) Rock areas, permanent road and surface water drainage ways on the revegetated area shall not require

stocking.

(ii) Standards for Commercial Forests.

(A) The area shall have a minimum stocking of 450 trees or shrubs per acre of which a minimum of 75 percent of countable trees or shrubs shall be commercial trees species.

(B) The number of trees or shrubs and the ground cover shall be determined using a sampling method approved by the department. When the stocking is equal to or greater than 450 trees or shrubs per acre and there is acceptable ground cover, the 10 year responsibility period shall begin.

(C) Upon expiration of the 10 year responsibility period and at the time of request for bond release, the permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfies 82-4-233. ~~and 82-4-277.~~

(iii) Standards for Woody Plants Other Than Commercial Forests.

(A) An inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the department. This inventory shall contain the following in addition to that information required for all types:

(I) site quality;

(II) stand size;

(III) stand condition;

(IV) site and species relations; and

(V) appropriate forest land utilization considerations.

(B) The stocking of trees, shrubs, half-shrubs and the groundcover established on the revegetated area shall be comparable to the stocking and groundcover on the reference area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement. The stocking of live woody plants shall be comparable to the stocking of woody plants of the same life form on the reference area. When this requirement is met and acceptable groundcover is achieved, the 10 year responsibility period shall begin.

(C) Upon expiration of the 10 year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:

(I) the woody plants established in the revegetated site are comparable to the stocking of live woody plants of the same life form of the approved reference areas with 80 percent statistical confidence; and

(II) the ground cover on the revegetated area satisfies paragraph (15)(b)(iv) of this rule; and that species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall meet the requirements of this rule.

RULE X PROTECTION OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES In addition to the requirements of section 82-4-231(3)(j), an operator shall:

(1) promptly report to the department the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed as threatened or endangered by Montana, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the department by that person;

(2) ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the strip or underground mining ~~activities~~ operations on the permit area are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA (1970), or in alternative guidance manuals approved by the department. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, Powerline Contacts by Eagles and other Large Birds, or in alternative guidance manuals approved by the department. For informational purposes, these two documents are on file at the Helena office of the department;

(3) locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(4) fence roadways where specified by the department to guide locally important wildlife to roadway underpasses~~.~~, Nno new barrier shall be created in known and important wildlife migration routes;

(5) fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(6) ensure that reclamation will provide for habitat needs of various wildlife species in an equal or greater capacity than was provided prior to mining~~.~~, Sspecial attention should be given to inanimate elements such as rock outcrops, boulders, scoria rubble, dead trees, etc., which may have existed on the surface prior to mining~~.~~, Ssuch elements should be recreated on post-mined areas to provide comparable habitat needs for wildlife;

(7) restore, consistent with 82-4-233, or avoid disturbance to habitats of unusually high value for fish and wildlife, and, where practicable, enhance such habitats;

(8) restore, consistent with 82-4-233, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas and, where practicable, enhance such habitats;

(9) afford protection to aquatic communities by avoiding stream channels as required in or restoring stream channels as required in Rule VII;

(10) not use pesticides on the area during strip or underground mining and reclamation ~~activities~~ operations unless approved by the department; and

(11) to the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the department as part of a management plan.

RULE XI AIR RESOURCE PROTECTION (1) Fugitive Dust. Each person who conducts strip or underground mining operations shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining and reclamation operations. The department shall approve the control measures appropriate for use in planning, according to applicable federal and state air quality standards, climate, existing air quality in the area affected by mining, and the available control technology.

(2) Control Measures. The fugitive dust control measures to be used, depending on applicable federal and state air quality standards, climate, existing air quality, size of the operation, and type of operation, shall include, as necessary, but not be limited, to:

(a) periodic watering of unpaved roads, with the minimum frequency of water approved by the department;

(b) chemical stabilization of unpaved roads with proper application of nontoxic soil cement or dust palliatives;

(c) paving of roads;

(d) prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;

(e) restricting the speed of vehicles to reduce fugitive dust caused by travel;

(f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust;

(g) restricting the travel of unauthorized vehicles on other than established roads;

(h) enclosing, covering, watering, or otherwise treating loaded haul trucks, and railroad cars to reduce loss of material to wind and spillage;

(i) substituting of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subjected to wind erosion;

(j) minimizing the area of disturbed land;

(k) prompt revegetation of regraded lands;

(l) use of alternatives for coal-handling methods, restriction of dumping procedures, wetting of disturbed materials during handling, and compaction of disturbed areas;

(m) planting of special windbreak vegetation at critical points in the permit area;

(n) control of dust from drilling, using water sprays, hoods, dust collectors, or other controls;

(o) restricting the areas to be blasted at any one time to reduce fugitive dust;

(p) restricting activities causing fugitive dust during periods of air stagnation;

(q) extinguishing any areas of burning or smoldering coal and periodically inspecting for burning areas whenever the potential for spontaneous combustion is high;

(r) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization;

(s) restricting fugitive dust a spoil and coal transfer and loading points with water sprays, negative pressure systems and baghouse filters, chemicals, or other practices; and

(t) covering coal storage and coal crushing facilities.

(3) Additional Measures. Where the department determines that application of fugitive dust control measures listed in subsection (2) is inadequate, the department may require additional measures and practices as necessary.

(4) Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air monitoring plan required under Rule II and approved by the department.

RULE XII POSTMINING LAND USE The postmining land use shall be ~~grazing~~ livestock and wildlife ~~habitat~~ grazing as outlined in 82-4-233(1) unless an alternate land use is approved under Rule XVI.

RULE XIII COAL CONSERVATION Strip or underground mining operations shall be conducted so as to prevent failure to conserve coal, utilizing the best appropriate technology currently available to maintain environmental integrity. The operator shall adhere to the approved coal conservation plan required in Rule II.

RULE XIV ALLUVIAL VALLEY FLOORS (1) Essential Hydrologic Functions. (a) Strip or underground coal mining operations shall be conducted to preserve, throughout the mining and reclamation process, the essential hydrologic functions of alluvial valley floors not within ~~an affected~~ a permit area. These functions shall be preserved by maintaining those geologic, hydrologic and biologic characteristics that support those functions.

(b) Strip or underground coal mining and reclamation operations shall be conducted to reestablish, throughout the mining and reclamation process, the essential hydrologic functions of alluvial valley floors within an area of land

affected. These functions shall be reestablished by reconstructing those geologic, hydrologic and biologic characteristics that support those functions.

(c) The characteristics that support the essential hydrologic functions of alluvial valley floors are those in Rule II (6)(c)(iii) and those other geologic, hydrologic, or biologic characteristics identified during premining investigations or monitoring conducted during the strip or underground mining operation.

(2) (a) Strip or underground coal mining operations shall not interrupt, discontinue, or preclude farming on alluvial valley floors, unless:

(i) the premining land use is undeveloped rangeland which is not significant to farming; or

(ii) the area of affected alluvial valley floor is small and provides or may provide negligible support for production from one or more farms.

(b) If environmental monitoring shows that a strip or underground coal mining operation is interrupting, discontinuing, or precluding farming on alluvial valley floors, the operation shall cease until remedial measures are taken by the person who conducts the operation. The remedial measures shall be approved by the department prior to the resumption of mining.

(c) Strip or underground coal mining and reclamation operations shall not cause material damage to the quality or quantity of water in surface or underground water systems that supply alluvial valley floors. If environmental monitoring shows that the strip or underground coal mining operation is causing material damage to water that supplies alluvial valley floors, the mining operations shall cease until remedial measures are taken by the operator. The remedial measures shall be approved by the department prior to the resumption of mining operations.

(d) Paragraphs (a) and (b) and (c) of this subsection do not apply to those lands which were identified in a reclamation plan approved by the department before August 3, 1977 for any strip or underground coal mining and reclamation operation that, in the year preceding August 3, 1977:

(i) produced coal in commercial quantities and was located within or adjacent to an alluvial valley floor, or

(ii) obtained specific permit approval by the department to conduct strip or underground coal mining and reclamation operations within an alluvial valley floor.

(3) Protection of Agricultural Uses. Strip or underground coal mining operations shall be conducted to ensure that the agricultural utility and the level of productivity of alluvial valley floors in affected areas are reestablished.

(4) Monitoring.

(a) An environmental monitoring system shall be install-

ed, maintained and operated by the permittee on all alluvial valley floors during strip or underground coal mining and reclamation operations and continued until all bonds are released in accordance with Rule XX. The monitoring system shall provide sufficient information to allow the department to determine that:

(i) the agricultural utility and production of the alluvial valley floor not within the affected area is being preserved;

(ii) the potential agricultural utility and production on the alluvial valley floor within the area the land affected has been reestablished;

(iii) the important characteristics supporting the essential hydrologic functions of the alluvial valley floor in the affected area have been reestablished after mining; and

(iv) the important characteristics supporting the essential hydrologic functions of an alluvial valley floor in areas not affected are preserved during and after mining.

(b) Monitoring shall be performed at adequate frequencies, to indicate long-term trends that could affect agricultural use of the alluvial valley floors.

(c) Monitoring shall be performed during operations to identify characteristics of the alluvial valley floor not identified in the permit application and to evaluate the importance of all characteristics requested by the department.

(d) All monitoring data collected and analyses thereof shall routinely be made available to the department.

(5) Significance Determination. The significance of the impact of the proposed operations on farming ~~will~~ shall be based on the relative importance of the vegetation and water of the grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the department as suitable for site-specific protection of agricultural activities in alluvial valley floors. The effect of the proposed operations on farming shall be concluded to be "significant" if they would remove from production, over the life of the mine, a proportion of the farm's production that would decrease the expected annual income from agricultural activities normally conducted at the farm.

(6) Material Damage Determination. Criteria for determining whether a strip or underground coal mining operation will materially damage the quantity or quality of waters include but are not limited to:

(a) potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by specific conductance in millimhos, to levels above the threshold value at which crop yields decrease,

as specified in Maas and Hoffman, "Crop Salt Tolerance--Current Assessment," Table 1, "Salt Tolerance of Agricultural Crops," unless the applicant demonstrates compliance with paragraph (b) below. Salt tolerances for agricultural crops have been published by E.V. Maas and G.J. Hoffman, in a paper entitled "Crop Salt Tolerance--Current Assessment" contained in The Journal of The Irrigation and Drainage Division, American Society of Civil Engineers, pages 115 through 134, June, 1977. Table 1, giving threshold salinity values is presented on pages 22 through 125. For types of vegetation not listed in Maas and Hoffman as specified by the department, based upon consideration of observed correlation between total dissolved solid concentrations in water and crop yield declines taking into account the accuracy of the correlations. This publication is hereby incorporated by reference as it exists on March 13, 1979. The Maas and Hoffman publication is on file and available for inspection at the office of the department;

(b) potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of those incorporated by reference in paragraph (a) shall not be allowed unless the applicant demonstrates, through testing related to the production of crops grown in the locality, that the proposed operations will not cause increases that will result in crop yield decreases;

(c) potential increases in the average depth to water saturated zones (during the growing season) located within the root zone of the alluvial valley floor that would reduce the amount of subirrigation land compared to pre-mining conditions;

(d) potential decreases in surface flows that would reduce the amount of irrigable land compared to pre-mining conditions; and

(e) potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased saturation of the root zone.

(7) For the purposes of subsections (5) and (6), a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to strip or underground coal mining operations.

RULE XV PRIME FARMLAND (1) General Requirements. (a) A permit for strip or underground coal mining operations on prime farmland shall be obtained under section 82-4-221.

(b) All applicable performance standards of Rule VIII

shall be complied with by those operations described in (1)(a) above.

(2) Specific Requirements.

(a) Topsoil Removal.

(i) ~~The entire A horizon or other suitable soil materials which will create a final topsoil having an equal or greater productive capacity than that which existed prior to mining shall be separately removed in a manner that prevents mixing or contamination with other material before replacement.~~ At a minimum, the operator shall segregate surface soil horizons from subsurface soil horizons in topsoil salvage operations as specified in Rule VIII(1). In all cases, topsoil removal shall be conducted in a manner that prevents mixing or contamination of each separate lift with other materials prior to replacement and which will create a final reconstructed topsoil having an equal or greater productive capacity than that which existed prior to mining.

(ii) ~~The B horizon of the natural soil or a combination of B horizon and underlying C horizon(s) or other suitable soil materials that will create a reconstructed root zone of equal or greater productive capacity than that which existed prior to mining shall be separately removed in a manner that prevents mixing or contamination with other material.~~ The standards of (2)(a)(i) and subsection (11) of Rule VIII shall apply to other suitable soil materials proposed for use as topsoil.

~~(iii) The underlying C horizons or other strata, or a combination of such horizons or strata, that when replaced will create in the reconstructed topsoil a final root zone of comparable depth and quality to that which existed in the natural soil shall be separately removed in a manner that prevents mixing or contamination with other material.~~

(iii)~~(iv)~~ The minimum depth of topsoil and topsoiling material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the topsoil replacement requirements of (e)(i) below.

(b) Stockpiling. If stockpiling of topsoil and topsoiling material is allowed by the department in lieu of immediate replacement, the materials removed pursuant to (2)(a) above must be stored separately from each other in a manner that will comply with provisions of Rule VIII.

(c) Topsoil Replacement.

(i) The minimum depth of topsoil to be reconstructed for prime farmland shall be 48 inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The department shall specify a depth greater than 48 inches wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil

horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the proposed permit area and have little or no beneficial effect on soil productive capacity.

(ii) The final graded spoils surface shall be scarified prior to topsoil replacement as required in Rule VIII.

(iii) The soil horizons or other suitable topsoiling material shall be replaced in a manner that avoids excessive compaction. Compaction shall be considered excessive if, on more than 10 percent of the replacement area, any layer of reconstructed topsoil has a moist bulk density of 0.1 gram per cubic centimeter more than the values stated in the approved permit application under Rule II for the equivalent layer of the undisturbed soil.

(iv) The ~~material from the~~ B and C soil horizons ~~combinations thereof, or other suitable material specified~~ salvaged pursuant to paragraphs (2)(a)~~(iii)~~ and ~~(2)(a)(ii)~~ of this section shall be replaced in ~~this~~ their original order ~~if re, materials in (2)(a)(iii) followed by materials in (2)(a)(ii),~~ and in such a manner as to create a final reconstructed topsoil having an equal or greater productive capacity than that which existed prior to mining and to avoid excessive compaction of the spoils surface ~~and to a thickness comparable to the root zone that existed in the soil before mining~~ and to a thickness needed to meet the requirements of (2)(c)(i) in this section.

(v) The A horizon or other suitable soil materials, ~~as~~ salvaged ~~specified~~ pursuant to paragraph (2)(a)~~(i)~~, shall be replaced as the final surface soil layer to a thickness that will equal or exceed the thickness of this layer as it existed before disturbance.

(vi) Nutrients and soil amendments shall be applied as approved by the department to establish quick vegetative growth.

(d) Revegetation. Each person who conducts strip or underground mining operations on prime farmlands, shall establish test plots which will be cropped until restoration of the premining productivity has met the requirements of this subsection. The remainder of the area, not used for test plots shall be reclaimed consistent with the standards of Rule IX. When restoration of the premining productivity has been demonstrated, the operator shall revegetate the test plots consistent with the standards of Rule IX. The operator may apply to reclaim the area as cropland subject to the requirements of Rule XVI. The test plots or the reclaimed area if reclaimed in accordance with Rule XVI shall ~~subject to the requirements of Rule XVI,~~ meet the following revegetation requirements during reclamation:

(i) following topsoil replacement, that person shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the department under Rule II and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of Rule IX shall be met;

(ii) wWithin a time period specified in the permit, but not to exceed 10 years after completion of backfilling and rough grading, ~~any~~ the test plot or the portion of the permit area which is prime farmland must be used for crops commonly grown, such as corn, soybeans, grain, hay, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. The crops may be grown in rotation with hay or pasture crops as defined for cropland consistent with Rule XVI. The department may approve a crop use of perennial plants for hay where this is a common long term use of prime farmland soils in the surrounding area. The level of management shall be equivalent to that occurring on the comparison area(s) or on which the premining target yields are based pursuant to paragraph (2)(d)(iii); and

(iii) revegetation success on prime farmlands shall be determined upon the basis of a comparison of actual crop production on the disturbed area and the crop production on undisturbed prime farmland with the same soils, slopes, and other pertinent characteristics in the immediate vicinity of the mining operation. If such undisturbed prime farmland is not available for comparison purposes, comparison of production on the disturbed area shall be made with the premining target yields approved by the department in the permit in accordance with Rule II. As a minimum, the following standards shall be met:

(A) average annual crop production on prime farmland disturbed by mining shall be determined based upon a minimum of 5 years of data; ~~crop-production-shall-be-measured-each-of the-5-years-immediately-prior-to-release-of-bond-according to-Rule-XX.~~

(B) adjustment for weather induced variability in the annual mean crop production may be permitted by the department if target levels are used pursuant to (2)(d)(iii) above;

(C) revegetation on prime farmland shall be considered successful when the level of crop production for each of the 5 years is equivalent to, or higher than, that on the comparison area or the predetermined target level of crop production.

(3) Issuance of Permit. A permit for the mining and reclamation of prime farmland may be granted by the department, if it first finds, in writing, upon the basis of a complete application, that:

~~(a)--the-approved-proposed-postmining-land-use-of-these prime-framlands-will-be-cropland;~~

(a) ~~(b)~~ the permit incorporates as specific conditions the contents of the mining and reclamation plan submitted under Rule II, after consideration of any revisions to that plan suggested by the Secretary of Agriculture also under Rule II; and

(b) ~~(c)~~ the proposed operations will be conducted in compliance with subsections (1) and (2) of this rule.

RULE XVI ALTERNATE RECLAMATION (1) Submission of Plan. Each operator who desires to conduct alternate reclamation pursuant to section 82-4-233) shall submit his plans to the department. The plan shall contain appropriate descriptions, maps and plans which show:

(a) the nature of the alternate reclamation;

(b) how use of the alternate reclamation allows a postmining land use which is consistent with the purposes of the Act;

(c) why the results are not attainable by use of non-alternate reclamation methods;

(d) that the alternate reclamation:

(i) is more or at least as environmentally protective, during and after the proposed strip or underground mining operations, as nonalternate reclamation methods; and

(ii) will not reduce the protection afforded public health and safety below that provided by nonalternate reclamation methods;

(e) that the applicant will conduct appropriate special monitoring, as determined by the department, with respect to the alternate reclamation during ~~and after the operation~~ the bonding period designed to identify, as soon as possible, potential risks to the environment and public health and safety from use of the alternate reclamation;

(f) the reclamation methods which will be implemented in the event the objective of the alternate reclamation plan is not attained; and

(g) for areas proposed for alternate revegetation the area(s) of undisturbed land to which the mined and reclaimed land shall be compared for bond release purposes.

(2) Public Notice. If the alternate reclamation plan is submitted as part of a permit application, the alternate reclamation plan shall be identified and briefly described in the newspaper advertisement by the applicant and the written notifications by the department required under Rule III(1). If an alternate reclamation plan is submitted as a revision of an approved reclamation plan, the submission shall be subject to the same notice requirements. In addition, the department shall notify the Regional Director of the proposal, and, on request, provide him with a copy of the plan.

(3) Approval. No permit authorizing an alternate reclamation plan shall be issued, unless the department first finds, in writing, on the basis of a complete application and the comments of the Regional Director, that:

(a) the plan meets the requirements of subsection (1) above;

(b) the plan is based on a clearly defined set of objectives which can reasonably be expected to be achieved;

(c) the permit contains conditions that specifically:

(i) limit the alternate reclamation authorized to that granted by the department;

(ii) impose enforceable environmental protection standards; and

(iii) require the permittee to conduct the periodic monitoring and reporting program set forth in the plan, if required.

(4) Review. After the permit review required in Rule III(2) and consultation with the Regional Director, the department shall require by order, supported by written findings, any reasonable revision or modification of the alternate reclamation provisions necessary to ensure that the operations involved are conducted to fully protect the environment and public health and safety. Any person who is or reasonably may be adversely affected by the order shall be provided with an opportunity for an informal conference.

(5) Alternate Postmining Land Uses.

(a) If a land use other than livestock ~~grazing~~ and wildlife ~~habitat~~ grazing is proposed, areas of land affected shall be restored in a timely manner to higher or better uses achievable under criteria and procedures of this section.

(b) The pre-mining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land had not been previously mined and had been properly managed.

(i) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(ii) The postmining land use for land that has received improper management shall be judged on the basis of the pre-mining use of surrounding lands that have received proper management.

(iii) If the pre-mining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to pre-mining use shall include a comparison with the ~~historic~~ use of the land prior to the change as well as its uses immediately preceding mining.

(c) Prior to the release of bond the permit area shall

be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the department after consultation with the landowner or the land-managment agency having jurisdiction over the lands, if all of the following criteria are met:

(i) the proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, state or federal land use policies and plans relating to the permit area. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans is submitted to the department within 60 days of notice by the department and before strip or underground mining operations begin. Any required approval, including any necessary zoning or other changes required for land use by local, state or federal land management agencies, is obtained and remains valid throughout the strip or underground mining operations;

(ii) specific plans are prepared and submitted to the department which show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The department may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation;

(iii) provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts strip or underground mining operations as appropriate, to provide the public facilities in a manner compatible with the plans submitted. The letters shall be submitted to the department before mining operations begin;

(iv) specific and feasible plans are submitted to the department which show that financing, attainment and maintenance of the postmining land use are feasible and, if appropriate, are supported by letters of commitment from parties other than the person who conducts the operations;

(v) plans for the postmining land use are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site;

(vi) the proposed use will neither present actual or probable hazard to public health or safety nor will pose any actual or probable threat of water flow diminution or pollution;

(VII) the use will not involve unreasonable delays in reclamation; and

(viii) necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the department and appropriate state and federal fish and wildlife management agencies have been provided a 60 day period in which to review the plan before mining operations begin.

(ix) ~~Proposals to change pre-mining land uses of range fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state and local laws, are reviewed by the department to ensure that~~

~~(A) ---- There is a firm written commitment by the person who conducts mining operations or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable;~~

~~(B) ---- there is sufficient water available and committed to maintain crop production; and~~

~~(C) ---- topsoil quality and depth are sufficient to support the proposed use.~~

(6) Alternate Revegetation.

(a) Where the operator proposes to plant cereal crops as an alternative revegetation plan the following minimum criteria must be met:

(i) all soil types within the proposed alternate revegetation area should be at least capability Class III, based on SCS criteria, prior to mining, and to be salvaged and redistributed to an equal depth and quality after mining;

(ii) the area proposed for crop use must be leveled to slope gradients of no greater than 5%;

(iii) the area proposed for cropping must have a history of being cropped or cultivated for at least 5 of the 10 years prior to operator purchase, lease or control of such land;

(iv) There is sufficient normal precipitation on the area or sufficient irrigation water available and committed to maintain crop production;

(v) ~~(iv)~~ the department may not release the reclamation phase III bonds held on the area until the operator has affirmatively demonstrated that the land demonstrates equivalent productivity compared to crop yields on unmined croplands producing the same crop with the same soils, slopes, and other pertinent characteristics in the immediate vicinity of the mining operation using equivalent management practices. This equivalence in productivity shall be sustained for at least the 5 years immediately prior to bond release;

(vi) ~~(v)~~ if unmined croplands are not available for comparison purposes as discussed in (6)(a)(v) above, target levels of production shall be established for bond release purposes. These target levels shall be based upon premining production levels of the area of land to be mined and subsequently reclaimed to the same cereal crops or as otherwise determined by the department; and

(vii) ~~(vi)~~ the operator must submit to the department a firm written commitment by the operator, or by the postmining landowner, that sufficient crop management will be practiced after release of applicable performance bonds to assure that the proposed postmining cropland use will remain practical and reasonable.

(b) If an area is proposed for seasonal range or hayland production after mining, that area must have a history of being utilized for seasonal range or hayland production for at least 5 years prior to operator lease, purchase or control. Provided, that where an operator proposes to use introduced grass species for seasonal range or hayland production where such did not exist prior to mining, the amount of land to be used for such purposes must not exceed that shown by the operator or post-mining landowner to be a necessary and essential part of an economically feasible postmining agricultural operation. The success of seasonal range or hayland shall be based on reference areas of the same crop on comparable soils. The production of the revegetated area must be comparable to the production of the reference area. The time frames shall be the same as in Rule IX.

(c) If the department determines that the operator's alternative revegetation operation has not produced, under viable agricultural practices, adequate crop production based on the production standards required in paragraph (6)(a)(iv) of this rule, or if the use of land for the production of crops is causing soil erosion or other deleterious effects, the operator shall reclaim the land to the standards provided for in section 82-4-233(1).

(d) Where cropland is to be the alternate postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, the fields shall be interspersed with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished.

(e) Where the primary land use is to be residential, public service, or industrial land use, ~~intersperse reclaimed~~ primary use lands shall be interspersed with greenbelts utilizing species of grass, shrubs and

trees useful as food and cover for birds and small animals, unless such green belts are inconsistent with the approved postmining land use.

RULE XVII AUGER MINING (1) General Requirements. Auger mining operations shall comply with applicable strip mining performance standards.

(2) Specific Performance Standards.

(a) Any auger mining associated with strip mining operations shall be conducted to maximize recoverability of mineral reserves remaining after the mining ~~activites~~ operations are completed. Each person who conducts auger mining operations shall leave areas of undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the department determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The department shall make such determination only upon presentation of appropriate technical evidence by the operator.

(b) Undisturbed areas of coal shall be left in unmined sections which:

(i) are minimum of 250 feet wide at any point between each group of auger openings to the full depth of the auger hole;

(ii) are no more than 2,500 feet apart, measured from the center of 1 section to the center of the next section, unless a greater distance is set forth in the permit application under Rule II and approved by the department; and

(iii) for multiple seam mining, shall have a width of at least 250 feet plus 50 feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically;

(c) No auger hole shall be made closer than 500 feet in horizontal distance to any abandoned or active underground mine workings, except as approved in accordance with Rule III.

(d) If the operation involves stripping and augering, the augering shall follow the stripping by not more than sixty (60) days and final grading and backfilling shall follow the augering by not more than fifteen (15) days, but in no instance shall an area be left ungraded more than 1,500 feet behind the augering.

(e) In order to prevent pollution of surface and groundwater and to reduce fire hazards, each auger hole, except as provided in paragraph (f) of this subsection, shall be plugged so as to prevent the discharge of water from the hole and access of air to the coal, as follows:

(i) each auger hole discharging water containing

toxic-forming or acid-forming material shall be plugged within 72 hours after completion by backfilling and compacting noncombustible and impervious material into the hole to depth sufficient to form a water-tight seal, or the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water quality standards under Rule VII, until the hole is properly sealed; and

(ii) each auger hole not discharging water shall be sealed as in paragraph (e)(i) of this subsection, to close the opening within 30 days following completion.

(f) An auger hole need not be plugged if the department finds that:

(i) impoundment of the water which would result from plugging the hole may create a hazard to the environment or public health or safety; and

(ii) drainage from the auger hole will not pose a threat of pollution to surface water and will comply with the requirements of Rule VII.

(g) The department shall prohibit auger mining, if it determines that:

(i) adverse water quality impacts cannot be prevented or corrected;

(ii) fill stability cannot be achieved;

(iii) the prohibition is necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources; or

(iv) subsidence resulting from auger mining may disturb or damage powerlines, pipelines, buildings, or other facilities.

(3) Permit Issuance. No permit shall be issued for any operation covered by this rule, unless the department finds, in writing, that, in addition to meeting all other applicable requirements of this subchapter, the operations will be conducted in compliance with this rule.

RULE XVIII UNDERGROUND MINING (1) Application Requirements.

(a) General Requirements. In addition to appropriate material required under Rule II, except paragraph (4)(c) thereof, any plan for underground mining shall include the following:

(i) a detailed description, with appropriate drawings, of permanent entry seals and down-slope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed mine plan area;

(ii) descriptions, including appropriate maps and crosssection drawings, of the proposed disposal methods and sites for placing underground development waste and excess

spoil generated at surface areas affected by surface operations and facilities. Each plan shall describe the geotechnical-investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to Rule II;

(iii) a survey which shall show whether structures or renewable resource lands exist within the proposed permit and adjacent areas and whether subsidence if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist or that no such material damage or diminution could be caused in the event of mine subsidence, and if the department agrees with such conclusion, no further information need to be provided in the application under this paragraph. In the event the survey shows such structures or renewable resource lands exist, and that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the department determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(A) a detailed description of the mining method and other measures to be taken which may affect subsidence, including:

(I) the technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

(II) the extent, if any, to which planned and controlled subsidence is intended;

(B) a detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value or reasonably foreseeable use of the surface, including:

(I) the anticipated effects of planned subsidence, if any;

(II) measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as backstowing or backfilling of voids, leaving support pillars of coal, and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place;

(III) measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including such measures as reinforcement of sensitive structures or features, installation of footers designed to reduce damage caused by movement, change of location of pipelines, utility lines, or other features, relocation of movable improvements to sites outside

the angle-of-draw, and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage;

(C) a detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one or more of the following:

(I) restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

(II) replacement of structures destroyed by subsidence;

(III) purchase of structures prior to mining and restoration of the land after subsidence to a condition capable of supporting and suitable for the structures and foreseeable land uses; and

(IV) purchase of non-cancellable insurance policies payable to surface owner in the full amount of the possible material damage or other comparable measures;

(D) a detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:

(I) the results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence;

(II) monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation;

(iv) location of each water and subsidence monitoring point;

(v) location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining ~~activities~~ operations;

(vi) a description of the design, operation and maintenance of any proposed ~~coal~~ processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the department and the Mine Safety and Health Administration;

(vii) a description of the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on the active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling;

(viii) description of the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime;

(ix) a description of each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(b) The requirements of paragraphs (a)(vi), (vii), (viii), and (ix) of this subsection shall also apply to pneumatic backfilling operations, except where the operations are exempted by the department from requirements specifying hydrologic monitoring.

(c) Application Requirements for In-Situ ~~Coal~~ Processing Operations.

(i) Any application for a permit for in-situ coal processing operations covered by this subsection shall be made according to all requirements of paragraphs, (a) and (b) above. In addition, the mining and reclamation operations plan for operations involving in situ ~~coal~~ processing operations shall contain information establishing how those operations will be conducted in compliance with the requirements of paragraph (2)(b) below, including:

(A) delineation of proposed holes and wells and production zones for approval of the department;

(B) specifications of drill holes and casings proposed to be used;

(C) a plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(D) plans for monitoring surface and groundwater and air quality as required by the department.

(ii) No permit shall be issued for in-situ ~~coal~~ processing applications, unless the department first finds, in writing, upon the basis of a complete application, that the operation will be conducted in compliance with all requirements of subsection (2) of this rule.

(2) Performance Standards.

(a) General Standards. In addition to all appropriate requirements of Rules IV through XIX, except Rule VII (12) and Rule (IV)(1)(m), the following requirements apply to underground mining operations:

(i) each exploration hole, other drill hole or borehole, shaft, well, or other exposed underground opening shall be cased, lined, or otherwise managed as approved by the department to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and ensure the safety of people, livestock, fish and wildlife, and machinery in the mine plan and adjacent area. Each exploration hole, drill hole or borehole or well that is uncovered or exposed by mining ~~activities~~ operations within the permit area shall be

permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the department. Use of a drilled hole or monitoring well as a water well must meet the provisions of Rule VII. This subsection does not apply to holes drilled and used for blasting in the area affected by surface operations;

(ii) each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining ~~activities~~ operations;

(iii) each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor groundwater conditions, shall be temporarily sealed until actual use;

(iv) when no longer needed for monitoring or other use approved by the department upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, exploratory hole, entry way or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the department in accordance with paragraphs (2)(a)(i), (vIII), (ix) and ~~(X)~~ (x). Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters;

(v) in addition to the measures identified in Rule VII the following practices are acceptable for minimizing water pollution in underground mines:

(A) designing mines to prevent gravity drainage of acid waters;

(B) sealing;

(C) controlling subsidence; and

(D) preventing acid mine drainage;

(vi) in addition to the requirements of Rule VII (3)(a), any discharge of water from underground workings to surface waters which does not meet the effluent limitations of Rule VII (3) shall also be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area;

(vii) in addition to the requirements of Rule VII (3)(b), sedimentation ponds and treatment facilities for discharges

from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of Rule VII (3) without treatment or until the discharge has permanently ceased;

(viii) surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine;

(ix) gravity discharge of water from an underground mine, other than a drift mine in an acid-producing or iron-producing coal seam, may be allowed by the department, if it is demonstrated that:

(A) (I) the discharge, without treatment, satisfies the water effluent limitations of Rule VII (3) and all applicable state and federal water quality standards; and

(II) the discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or,

(B) (I) the discharge is conveyed to a treatment facility in the permit area in accordance with Rule VII;

(II) all water from the underground mine discharged from the treatment facility meets the effluent limitations of Rule VII and all other applicable state and federal statutes and regulations; and

(III) consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge;

(x) for a drift mine located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.

(b) In Situ ~~Coal~~ Processing Operation Performance Standards.

(i) Coal Operations.

~~(i)~~(A) The person who conducts in situ processing coal operations shall comply with paragraph (2)(a) of this rule and this paragraph.

~~(ii)~~(B) In situ processing operations shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

~~(A)~~(I) avoiding discharge of fluids into holes or wells, other than as approved by the department;

~~(B)~~(II) injecting process recovery fluids only into geologic zones or intervals approved as production zones by the department;

~~(C)~~(III) avoiding annular injection between the walls of the drill hole and the casing; and

~~(D)~~(IV) preventing discharge of process fluid into surface waters.

~~(iii)~~(C) Each person who conducts in situ coal processing operations shall follow the approved plan pursuant to paragraph (1)(c).

~~(iv)~~ (D) Each person who conducts in situ coal processing operations shall prevent flow of the process recovery fluid:

~~(A)~~ (I) horizontally beyond the affected area identified in the permit; and

~~(B)~~ (II) vertically into overlying or underlying aquifers.

~~(v)~~ (E) Each person who conducts in situ coal processing operations shall restore the quality of affected groundwater in the mine plan and adjacent areas, including groundwater above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the groundwater is not diminished.

~~(vi)~~ (F) Each person who conducts in situ coal processing operations shall monitor the quality and quantity of surface and groundwater and the subsurface flow and storage characteristics, in a manner approved by the department under Rule VII to measure changes in the quantity and quality of water in surface and groundwater systems in the mine plan and adjacent areas. Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the department as necessary according to appropriate federal and state air and water quality standards.

(ii) Uranium Operations. With regard to the subsurface hydrologic effects of in-situ uranium mining, the operator shall comply with all rules of the Department of Health and Environmental Sciences and the operator's bond shall ensure compliance with those rules. With regard to all other effects, the performance standards of this rule shall apply.

(3) Subsidence Control.

(a) General Requirements. Underground mining operations shall be planned and conducted so as to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and so as to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence. Nothing herein shall be construed to prohibit the standard method of room and pillar mining.

(b) Compliance with Plan. The person engaged in underground mining operations shall comply with all provisions of the subsidence control plan prepared pursuant to subsection (1) above and approved by the department.

(c) Public Notice. The mining schedule shall be distributed by mail to all owners of property and residents within the area above the underground workings and adjacent areas. Each such person shall be notified by mail at least 6 months prior to mining beneath his or her property or residence. The notification shall contain, as a minimum:

(i) identification of specific areas in which mining will take place;

(ii) dates of mining activities that could cause subsidence and affect specific structures; and

(iii) measures to be taken to prevent or control adverse surface effects.

(d) Surface Owner Protection. Each person who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably foreseeable use of the surface lands shall, with respect to each surface area affected by subsidence:

(i) restore, rehabilitate, or remove and replace each damaged structure, feature or value promptly after the damage is suffered to the condition it would have been in if no subsidence had occurred and restore the land to a condition capable of supporting the reasonably foreseeable uses it was capable of supporting before subsidence; or

(ii) purchase the damaged structure or feature for its fair market, pre-subsidence value, and, after subsidence occurs shall, to the extent technologically and economically feasible, promptly restore the land surface to a condition capable of and suitable for supporting the purchased structure and other foreseeable uses it was capable of supporting before mining; nothing in this paragraph shall be deemed to grant or authorize an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining operations; or

(iii) compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by purchase prior to mining of a noncancellable, premium-prepaid insurance policy or other means approved by the department, thereby assuring before mining begins that payment will occur; indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.

(e) Buffer Zones.

(i) Underground mining operations shall not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more, unless the department, on the basis of detailed subsurface information, determines that subsidence will not cause material damage to streams, water bodies and associated structures. If subsidence causes material damage, then measures will be taken to the extent technologically and economically feasible to correct the same and to prevent additional subsidence from occurring.

(ii) Underground mining operations beneath any aquifer

that serves as a significant source of water supply to any public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of groundwater between the aquifer and other strata. The department may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and water supply.

(iii) Underground mining operations shall not be conducted beneath or in close proximity to any public buildings, including but not limited to churches, schools, hospitals, courthouses, and government offices, unless the department, on the basis of detailed subsurface information, determines that subsidence from those ~~activities~~ operations would not cause material damage to these structures and specifically authorizes the mining operations.

(iv) The department shall suspend underground mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments or permanent streams if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

RULE XIX PROSPECTING (1) Application. A person who intends to prospect for coal or uranium on land not included in a valid strip mining permit must obtain a valid prospecting permit from the department. An application for a prospecting permit shall be made on forms provided by the department, and shall be accompanied by the following information:

(a) the name, address, and telephone number of the representative of the applicant who will be present at and be responsible for the prospecting;

(b) documentation that the proposed exploration program would not adversely affect any area possessing special, exceptional, critical, or unique characteristics as defined in 82-4-227; the applicant shall promptly report the existence of such characteristics if in the course of prospecting he becomes aware of them;

(c) identification of any significant historical, archaeological, ethnological, and cultural values in the area to be affected and possible mitigating measures to be exercised should any of the above values be encountered;

(d) a narrative description of the significant fish and wildlife species in the general area of operations, including rare and endangered species as listed by the Bureau of Sport Fisheries and Wildlife and written documentation from appropriate fish and wildlife management agencies that the proposed prospecting activity will not adversely affect such species;

(e) a narrative description of the local scenic, topo-

graphic, geological formations and vegetation in the area to be affected;

(f) a prospecting map which meets the following requirements:

(i) the map shall be of sufficient size and scale to adequately show all areas to be prospected; standard United States Geological Survey Topographic quadrangle maps ~~will~~ shall be used as base maps, if available;

(ii) if prospecting by test hole ~~exploration~~ is proposed, the maps shall include proposed locations, size and the average proposed depth of test holes; specific locations for initial exploration shall be shown by quarter section, section, township and range; new road construction for drill rig or seismic equipment access shall be clearly indicated on the maps; permanent roads, and roads that are to be abandoned, shall be identified;

(iii) each map shall contain the following:

(A) excavations or test cuts shown by location and size;

(B) locations of streams, lakes, stockwater ponds, wells or springs that are known or readily discoverable proximate to prospecting operations:

(C) the route taken by the person doing the prospecting to each drill site;

(D) occupied dwellings and pipelines;

(E) historic, topographic, cultural and drainage features;

(F) location of habitat of species described in paragraph (1)(d) above; and

(G) the name and address of surface owners and surface lessees of the affected area;

(H) all maps must be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by ~~the strip mining laws of Montana~~ Part 2, Chapter 4, Title 82, MCA." The certification shall be signed and notarized in affidavit form;

(g) a narrative description of the exploration program which shall as a minimum include:

(i) a description of the proposed method of exploration;

(ii) the type of equipment to be used in the exploration;

(iii) the number and location by legal description of proposed drill holes and their size and depth (refer to map location); the depth(s) of any known subsurface groundwater occuring above the deepest projected depth of the exploration operation; the drilling medium used (air, water, mud, etc.) and the method of containing drilling fluids;

(iv) a description of the plugging procedures and materials used to comply with the provisions of (6)(a)(iii) of this rule;

(v) a discussion of preventive and corrective measures that will be taken to guard against or correct water pollution problems that develop with streams, lakes, stockwater ponds, wells or springs that are known or readily discoverable and other measures proposed to be followed to protect the environment from adverse impacts as a result of the ~~exploration activities~~ prospecting operations.

(vi) a plan showing earth moving contemplated for road and drill sites in the prospecting program;

(h) the mineral or minerals to be prospected;

(i) the source of the applicant's legal right to prospect for the mineral on the land affected by the permit including a listing of all surface and subsurface estate owners; the listing shall include the current mailing address ~~and phone number~~ of each party affected;

(j) an estimated timetable for conducting and completing each phase of exploration and reclamation;

(k) a description of the measures to be taken to comply with the performance standards of this rule.

(2) Information For Investigations. In the event that the department must investigate possible environmental damage or complaints which may occur as a direct result of prospecting in the permit area, the applicant shall furnish sufficient information to the department to facilitate such investigation. Such information ~~will~~ shall include statigraphic findings, test hole logs and related data.

(3) ~~Reports.--(a)~~ Monthly Report. A monthly report shall be submitted for each successive 30 day period no later than the 15th of the following month, provided, however, that monthly reports need not be submitted for 30 day periods of inactivity. Reports shall include, but are not limited to, the following information:

(i) location of all holes drilled;

(ii) updated maps if holes have to be added, deleted or relocated;

(iii) any road construction;

(iv) current location of all drill rigs and test equipment; and

(v) areas disturbed, graded and seeded.

~~(b) Annual Reports. Annual reports shall be submitted to the department pursuant to the provisions of 82-4-226(7) and 82-4-237 of the Act. Annual reports shall be submitted within 30 days after the permit expires. The annual report shall include the information required in section 82-4-237.~~

(4) Renewal. At least thirty (30) days, but not more

than sixty (60) days prior to the ~~renewal~~ anniversary date of the permit, the operator ~~shall~~ may submit an application for permit renewal to the department. This application shall include:

(a) the number of drill holes permitted;

(b) the number of drill holes disturbed;

(c) a listing of any other surface disturbances;

(d) the number of acres of land disturbed by the operation;

(e) the number of drill holes and other disturbances that have been reclaimed and the extent such has been carried out; and

(f) an updated map which shows all revisions to the current permit.

(5) Environmental Monitoring. The person who conducts prospecting operations shall, to the extent practicable, measure important environmental characteristics of the ~~exploration~~ prospecting area during prospecting to minimize environmental damage to the area.

(6) General Performance Standards.

(a) Drill Holes.

(i) Mixing. Prospecting operations shall be conducted to completely avoid mixing of underground waters detrimental to any existing or potential water supply. ~~may result from the prospecting operations.~~ All ~~exploration~~ prospecting holes shall be abandoned in accordance with the following provisions ~~set forth in Rule VII (2)~~ immediately after geophysical loggings are complete unless the hole has been transferred as a water well in compliance with Rule VII subsection (14). Unnecessary delay is prohibited unless approved by the department.

~~(ii) All flowing wells shall be permanently sealed unless approved by the department for other uses. The department may require a written request from a landowner who desires that a drill site be reclaimed as a well.~~

~~(iii) Reclamation of drill holes as water wells shall be conducted according to the procedures of Rule VII.~~

~~(iv) Aquifers shall not be contaminated by surface drainage~~

(ii) Contamination. The operator shall use appropriate techniques to:

(A) prevent the escape of oil or gas from all drill holes;

(B) prevent contamination of state waters from oil or gas; and

(C) prevent aquifer contamination by surface drainage~~;~~.

(iii) Plugging Requirements. Any person who conducts prospecting operations shall use the following techniques to plug all prospecting holes:

(A) no cuttings shall be placed in the hole and cuttings shall be spread over the earth's surface to a depth less than one-half inch or cuttings may be removed to a preapproved disposal pit where proper topsoil salvage and reclamation techniques shall be used consistent with Rule VIII; and

(B) if the hole is cased, the casing shall be cut off at the ground surface on rangeland and two feet below the surface on cropland or pastureland;

(C) if the hole is not cased, drilled holes shall be abandoned;

(D) under circumstances where circulation is lost to reformation or artesian flowing conditions are encountered, a homogeneous cement mixture shall be slurried into the hole from the bottom to the surface on rangeland or on cropland or pastureland and on other lands to within 2 feet of the surface and topsoil placed in the remaining 2 feet; or

(E) where circulation is not lost, from the bottom to within 5 feet of the ground surface on rangeland and 7 feet of the surface on cropland with a homogeneous fluid containing water and a high quality sodium bentonite with no toxic nor degradable additives, with:

(I) an A.P.I. filtrate volume of not more than 12.0 cm^3 and a cake thickness not more than 3/32's of an inch based on a 30 minute filtration test at 100 P.S.I. and ambient Temperature;

(II) an A.P.I. 10 minute gel strength of not less than 20 lb./100 square feet; and

(III) a 5 foot cement plug from the top of the bentonite to the surface on rangeland and to 2 feet below the surface on cropland; and

(F) by making each drill hole with a wooden stake.

(b) Roads.

(i) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts prospecting ~~activities~~ operations to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(ii) Any new roads constructed for prospecting activities shall meet the requirements of Rule V.

(iii) Existing roads may be used for exploration in accordance with the following:

(A) all applicable federal, state, and local requirements shall be met;

(B) if road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then paragraph ~~ii~~ (e) of this subsection shall apply to all areas of the road which are altered or which result in such additional contributions; and

(C) if the road is significantly altered for exploration activities and will remain as a permanent road after exploration shall ensure that the requirements of Rule V, as appropriate, are met for the design, construction, alteration, and maintenance of the road.

(iv) Promptly after ~~exploration activities~~ operations are completed, existing roads used during exploration shall be reclaimed either:

(A) to a condition equal to or better than their pre-~~exploration~~ prospecting condition; or

(B) to the condition required for permanent roads under Rule V.

(c) Prior to earth moving or excavations of any type, the A and B horizons, or the darker colored root containing materials shall be salvaged and stored in an area that will be undisturbed and not subject to excessive wind or water erosion. The underlying subsoil materials shall, if necessary, be salvaged and stored in an area separate from A and B horizon materials. Immediately upon cessation of operations the subsoil shall be replaced with the surface left in a roughened condition. The A and B horizons shall then be replaced over the subsoil material in such a manner that the disturbed area blends smoothly with the adjacent undisturbed land surface.

(d) Revegetation. After disturbed areas have been topsoiled, they shall be planted at the first appropriate season to such legumes, grasses, shrubs and trees as are necessary to establish on the affected area, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of the land affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of meeting the criteria set forth in 82-4-233(1)(a),(b), and (c).

(e) Diversions. With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during prospecting activities. Overland flow of water shall be diverted in a manner that:

(i) prevents erosion;

(ii) to the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area; and

(iii) complies with all other applicable state or federal requirements.

(f) Removal of Equipment. All equipment shall be removed from the exploration area promptly when it is no longer needed for exploration, except for that equipment that the department determines may remain to:

(i) provide additional environmental quality data;

(ii) reduce or control the on- and off-site effects of the ~~exploration activities~~, prospecting operations; or

(iii) facilitate future strip or underground operations by the person conducting the ~~exploration~~, prospecting under an approved permit.

(g) Hydrologic Balance. Prospecting shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance and shall include sediment control measures such as those listed in Rule VII or sedimentation ponds which comply with Rule VII. The department may specify additional measures.

(h) Toxic or Acid-Forming Materials. Toxic- or acid-forming materials shall be handled and disposed of in accordance with Rule IV. Additional measures may be specified by the department.

(7) Special Performance Standards: Drilling. If drilling is proposed, the prospecting plan shall comply with the following:

(a) drill sites shall not be constructed in stream channelways (dry or flowing) or in an area where cuttings or fluid may enter such stream channelways;

(b) excavations and dozer work shall be kept to a minimum; all reasonable efforts will be made to locate drill sites in areas where no dozer work is necessary;

(c) portable mud pits shall be used where feasable;

(d) drilling mud and drill cuttings shall be confined to the site; ~~the cuttings that can not be placed in the upper two feet of the drill hole shall be spread over the earth's surface to a depth less than one half inch, or cuttings may be removed to a preapproved disposal pit where proper topsoil salvage and reclamation techniques will be used consistent with Rule VIII,~~ cuttings shall be disposed of in accordance with 6(a)(iii)(A); and

(e) All refuse from drilling operations shall be completely disposed of by burying or hauling to an approved landfill dump.

~~(f) the center of each drill hole shall be marked with a wooden stake; and~~

~~(g) under circumstances where circulation is lost to the formation or where artesian flowing conditions are encountered, drill hole abandonment shall be partially accomplished by cementing off the fractured or producing zone until drilling fluid can be maintained in the hole or where the artesian pressure is effectively sealed; the remaining unfilled hole shall be abandoned according to (8)(a)(b) of this rule.~~

(8) Test Pits.

(a) Application and Additional Performance Standards. In addition to all the other performance standards set forth in subsection (6) above, prospecting test pits shall also comply with the following requirements:

(i) test pits or other excavations shall be located out of natural flowing streams;

(ii) spoil shall not be placed in drainageways; the lower edge of spoil piles shall be placed well above the highwater flood level;

(iii) applications, reclamation plans.; and reclamation for excavations or test pits that are to produce test shipments of minerals shall comply with Rules II and IV through XXII unless otherwise approved by the department.

(b) Public Notice and Opportunity to Comment. Public notice of the application for a test pit and opportunity to comment shall be provided as follows:

(i) within such time as the department may designate, public notice of the filing of the application with the department shall be posted by the applicant at the courthouse or other public office designated by the department in the vicinity of the proposed test pit area;

(ii) the public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address of the department at which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of the proposed test pit; and

(iii) any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.

(c) Action on Application.

(i) The department shall act upon a completed application for approval within a reasonable period of time.

(ii) The department shall approve a complete application if it finds, in writing, that the applicaant has demonstrated that the prospecting and reclamation described in the application will be conducted in accordance with the Act and this subchapter.

(d) Notice, Review and Decision.

(i) The department shall notify the applicant and the appropriate local government officials, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(ii) Any person with interests which are or may be adversely affected by a decision ~~of the department pursuant to paragraph (c) above,~~ shall have the opportunity for administrative review as are set forth in Rule III.

RULE XX BONDING AND INSURANCE COVERAGE (1) Definitions. For purposes of this rule, the following definitions shall apply:

"Surety bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee

which is supported by the performance guarantee of a corporation licensed to do business as a surety in Montana.

"Collateral bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee and which is supported by the deposit with the department of cash, negotiable bonds of the United States, state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

(2) Determination of Amount of Bond. The standard applied by the department in determining the amount of performance bond shall be the estimated cost to the department if it had to perform the reclamation, restoration and abatement work required of a person who conducts strip or underground coal mining operations under the Act, this subchapter, and the permit, and such additional work as would be required to achieve compliance with the general standards for revegetation in Rule IX (15) in the event the permittee fails to implement an approved alternative postmining land use plan within the two years required by Rule XVI. This amount shall be based on, but not be limited to:

(a) the estimated costs submitted by the permittee in accordance with Rule II;

(b) the additional estimated costs to the department which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(c) all additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this paragraph;

(d) an additional amount based on factors of cost changes during the preceding 5 years for the types of activities associated with the reclamation to be performed; and

(e) such other cost information as may be required by or available to the department.

(3) Period of Liability. Intensive Post-Mining Agricultural Use. (a) If the department approves a long-term intensive agricultural postmining land use in accordance with Rule XVI, the applicable 10-year period of liability shall commence at the date of initial planting for such long-term intensive agricultural land use.

(b) The department may, upon a written finding, after approving a long-term intensive agricultural land use pursuant to Rule XVI, grant an exception to the revegetation requirements of Rule IX but shall not grant exception to the period of liability in this section.

(4) Adjustment of Amount of Bond. (a) The amount of the performance bond shall be adjusted by the department as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation changes or when the cost of future reclamation, restoration or abatement work changes. The department shall notify the permittee of any proposed bond adjustment and provide the permittee an opportunity for an informal conference on the adjustment. The department shall review each outstanding performance bond at the time that permit reviews are conducted under Rule III and re-evaluate those performance bonds in accordance with the standards in subsection (2).

(b) A permittee may request reduction of the required performance bond amount upon submission of evidence to the department proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the department to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall be considered as a request for partial bond release in accordance with the procedures of subsection (11) of this rule.

(5) Form of the Performance Bond. (a) The form for the performance bond shall be as provided by the department. The department shall allow for either:

(a) a surety bond, or

(b) a collateral bond.

(6) Terms and Conditions of the Bond. In addition to the requirements of section 82-4-223, surety bonds shall be subject to the following requirements:

(a) the department shall not accept surety bonds in excess of 10 percent of the surety company's capital surplus account as shown on a balance sheet certified by a Certified Public Accountant; and

(b) the department shall not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided in paragraph (a) of this subsection.

(7) Incapacity of Surety. Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of 82-4-223 and shall discontinue ~~surface coal~~ strip or underground mining operations until new performance bond coverage is approved.

(8) Certificates of Deposit. (a) The department shall not accept an individual certificate for a denomination in excess of $40,000, or maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.

(b) The department shall only accept automatically renewable certificates of deposit.

(c) The department shall require the applicant to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this subchapter.

(9) Letter of Credit. Letters of credit shall be subject to the following conditions:

(a) the letter may only be issued by a bank organized or authorized to do business in the United States;

(b) the letter must be irrevocable prior to a release by the department in accordance with subsection (11);

(c) the letter must be payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued in accordance with paragraph (12)(f);

(d) ~~The department shall not accept~~ The letter ~~of credit~~ may not be for an amount in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a Certified Public Accountant.

(e) the department shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided in paragraph (6)(a) of this subsection;

(f) the department may provide in the indemnity agreement that the amount shall be confessed to judgment upon forfeiture, if this procedure is authorized by state law; and

(g) the department shall provide that:

(i) the bank ~~will~~ shall give prompt notice to the permittee and the department of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(ii) in the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the department; and

(iii) upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of section 82-4-223 and shall discontinue strip or underground ~~coal~~ mining operations until new performance bond coverage is approved.

(10) Replacement. (a) The department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds.

(b) The department shall not release existing performance bonds until the permittee has submitted and the department has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this subsection shall not constitute a release of bond under subsection (11).

(11) Bond Release Application Procedure. (a) Bond Release Application and Contents. The permittee or any person authorized to act on his behalf may file an application with the department for release of all or part of the performance bond liability applicable to a particular permit after all reclamation restoration and abatement work in a reclamation phase as defined in Rule IX has been completed on the entire permit area or on an area approved section 82-4-223 for the incremental filing for and release of bond liability.

(i) Applications may only be filed at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed.

(ii) The application shall include copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These letters shall be sent before the permittee files the application for release.

(iii) Within 30 days after filing the application for release the permittee shall submit proof of publication of the advertisement required by paragraph (b) of this subsection. Such proof of publication shall be considered part of the bond release application.

(b) Newspaper Advertisement of Application. At the time of filing an application under this rule, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement shall:

(i) be placed in the newspaper at least once a week for four (4) consecutive weeks;

(ii) show the name of the permittee, including the number and date of issuance or renewal of the permit;

(iii) show the precise location and the number of acres of the lands subject to the application;

(iv) show the total amount of bond in effect for the permit area and the amount for which release is sought;

(v) summarize the reclamation, restoration or abatement work done, including, but not limited to backstowing or mine sealing, if applicable, and give the dates of completion of that work;

(vi) describe the reclamation results achieved, as they relate to compliance with the Act, this subchapter, and the approved mining and reclamation plan and permit; and

(vii) state that written comments, objections, and requests for public hearing or informal conference may be submitted to the department, provide the address of ~~that office,~~ the department, and the closing date by which comments, objections, and requests must be received.

(c) Objections and Requests for Hearing. Written objections to the proposed bond release and requests for an informal conference may be filed with the department by any affected person within thirty (30) days following the last advertisement of the filing of the application. For the purpose of this section, an affected person is:

(i) any person with a valid legal interest which might be adversely affected by bond release; and

(ii) the responsible officer or head of any federal, state or local government agency which:

(A) has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved, or

(B) is authorized to develop and enforce environmental standards with respect to strip or underground mining ~~and reclamation~~ operations.

(d) Inspection by the Department. The department shall inspect and evaluate the reclamation work involved within a reasonable time period after receiving a complete application for bond release. The surface owner, or agent, or lessee shall be given notice of such inspection and may participate with the department in making the bond release inspection.

(e) Informal Conferences. The department shall schedule a conference if written objections are filed and a conference is requested. The conference shall be held in the locality of the permit area for which bond release is sought.

(i) Notice of an informal conference shall be published in the Montana Administrative Register and in a newspaper of general circulation in the locality of the conference at least two weeks before the date of the conference.

(ii) The informal conference shall be held within 30 days from the date of the notice.

(iii) The requirements of the Administrative Procedure Act shall not apply to the conduct of the informal conference.

(iv) An electronic or stenographic record shall be made of the conference and the record maintained for access by the parties, until final release of the bond, unless recording is waived by all of the parties to the conference.

(f) Departmental Review and Decision.

(i) The department shall consider, during inspection evaluation, hearing and decision:

(A) whether the permittee has met the criteria for release of the bond under this subsection;

(B) the degree of difficulty in completing any remaining reclamation, restoration or abatement work; and

(C) whether pollution of surface and subsurface water is occurring, the probability of future pollution or the continuance of any present pollution, and the estimated cost of abating any pollution.

(ii) If no informal conference has been held under this subsection, the department shall notify within a reasonable time period the permittee and any other interested parties in writing of its decision to release or not to release all or part of the performance bond or deposit.

(iii) If there has been an informal conference held under this subsection, the notification of the decision shall be made to the permittee and all interested parties within 30 days after conclusion of the conference.

(iv) The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to request a public hearing in accordance with paragraphs (g) and (h) of this subsection.

(v) The department shall not release the bond until:

(A) the town, city or other municipality nearest to, or the county in which the strip or underground ~~coal~~ mining and reclamation operation is located has received at least 30 days notice of the release by certified mail; and

(B) the right to request a public hearing pursuant to paragraph (g) of this rule has not been exercised, or a final decision by the hearing authority approving the release has been issued pursuant to paragraph (h) of this subsection.

(g) Administrative Review-Public Hearings. Following receipt of the decision of the department under paragraph (f), the permittee or any affected person may request a public hearing on the reasons for that decision. Requests for hearings shall be filed within 30 days after the permittee and other parties are notified of the decision of the department under paragraph (f).

(h) Public hearings. The department shall inform the permittee, local government, and any objecting party of the time, date, and place of the hearing and publish notice of the hearing in the Montana Administrative Register, ~~if any,~~ and in a newspaper of general circulation in the locality of the permit area twice a week for two consecutive weeks before the hearing. The hearing shall be adjudicatory in nature and be held within 30 days of the receipt of the request, in the town or city nearest the permit area, or ~~the state~~ in Helena ~~capital,~~ at the option of the objector. The department may subpoena witnesses and printed materials and compel the

attendance of witnesses and production of the materials at the hearing. A verbatim record of the hearing shall be made and the transcript made available on the motion of any party or by order of the department. The decision of the hearing authority shall be made within 30 days of the hearing. Parties seeking to reverse the decision or any part of the decision of the department which is the subject of the hearing shall have the burden of presenting a preponderance of evidence, to persuade the hearing authority that the decision cannot be supported by the reasons given in notification of the department's decision.

(12) Criteria and Schedule for Release of Performance Bond.

(a) The department shall not release any liability under performance bonds until it finds that the permittee has met the requirements of the applicable reclamation phase as defined paragraph (e) of this subsection. The department may release portions of the liability under performance bonds applicable to a permit following completion of reclamation phases on the entire permit area or on incremental areas within the permit area.

(b) The maximum liability under performance bonds applicable to a permit which may be released at any time prior to the release of all acreage from the permit area shall be calculated by multiplying the ratio between the acreage on which a reclamation phase has been completed and the total acreage in the permit area times the total liability under performance bonds applicable to a permit, times:

(i) 0.6 if reclamation phase I has been completed (but not an amount which would reduce the bond level below $200/acre); or

(ii) .25 if reclamation phase II has been completed.

(c) Acreage may be released from the permit area only after reclamation phase III has been completed. The maximum performance bond liability applicable to a permit which may be released at any time prior to the completion of reclamation phase III on the entire permit area shall be calculated by multiplying the ratio between the acreage on which reclamation phase III has been completed and the total acreage in the permit area times the total liability under performance bonds applicable to a permit, times 0.15.

(d) The department shall not release any liability under performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the department to complete the approved reclamation plan, achieve compliance with the requirements of the Act, this subchapter or the permit, and abate any significant environmental harm to air, water or land resources or danger to the public

health and safety which might occur prior to the release of all lands from the permit area. Where the permit includes an alternate postmining land use plan approved pursuant to Rule XVI, the department shall also retain sufficient liability for the department to complete any additional work which would be required to achieve compliance with the general standards for revegetation Rule IX (15) in the event the permittee fails to implement the approved alternate postmining land use plan within the two years required by Rule IX (15).

(e) For the purposes of this section:

(i) reclamation phase I shall be deemed to have been completed when the permittee completes backfilling, topsoil replacement, regrading, and drainage control in accordance with the approved reclamation plan; and

(ii) reclamation phase II shall be deemed to have been completed when:

(A) revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

(B) the lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of the Act, Rule VII, or the permit; and

(C) with respect to prime farmlands, soil productivity has been returned to the level of yield as required by Rule XV when compared with non-mined prime farmland in the surrounding area as determined from the soil survey performed under the Act and the approved plan;

(D) the provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department; and

(E) the reestablishment of essential hydrologic functions and agricultural productivity on alluvial valley floors has been achieved;

(iii) reclamation phase III ~~will~~ shall be deemed to have been completed when the permittee has successfully completed all strip or underground ~~coal~~ mining operations in accordance with the approved reclamation plan, including the implementation of any alternative land use plan approved pursuant to Rule XVI and achieved compliance with the requirements of the Act, this subchapter, the permit, and the applicable liability period under the Act and this rule has expired.

(13) Bond Forfeiture.

(a) Procedures. In the event forfeiture of the bond is necessary the department shall:

(i) send written notification by certified mail, return receipt requested to the permittee, and the surety on the bond, if applicable, of the department's determination to

forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited;

(ii) advise the permittee and surety, if applicable, of any rights of appeal that may be available; and

(iii) proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section, for the amount forfeited, and

(iv) if an appeal is filed, defend the action.

(b) Effect of Forfeiture.

(i) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the department.

(ii) The department may forfeit any or all bond deposited for an entire permit area. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single operation shall extend to the entire permit area with respect to protection of the hydrologic balance.

(c) Criteria for Forfeiture.

(i) A bond shall be forfeited, if the department finds that:

(A) The permittee has violated any of the terms or conditions of the bond; or

(B) the permittee has failed to conduct the strip or underground mining and reclamation operations in accordance with the Act, this subchapter, the conditions of the permit, within the time required by the act, this subchapter, and the permit; or

(C) the permit for the area under bond has been revoked, unless the operator assumes liability for completion of reclamation work; or

(D) the permittee has failed to comply with a compliance schedule approved by the department.

(iv) A bond may be forfeited, if the department finds that:

(A) the permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court; or

(B) creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, at the permit area or on the collateral pledged to the department; or

(C) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with the Act, this subchapter, and the permit.

~~(f)~~(d) Determination of Forfeiture Amount. The department shall either:

(i) determine the amount of the bond to be forfeited on the basis of the estimated cost to the department or its contractor to complete the reclamation plan and other regulatory requirements in accordance with the Act, this subchapter, and the requirements of the permit; or

(ii) forfeit the entire amount of the bond for which liability is outstanding and deposit the proceeds thereof in an interest-bearing escrow account for use in the payment of all costs and administrative expenses associated with the conduct of reclamation, restoration or abatement activities by the department.

(14) Insurance Coverage.

(a) Minimum insurance coverage to comply with 82-4-222(5) is $300,000 bodily injury coverage for each occurrence and $500,000 in the aggregate and $300,000 property damage for each occurrence and $500,000 in aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including completion of all reclamation operations required under this subchapter.

(c) The policy shall include a rider requiring that the insuror notify the department whenever substantive changes are made in the policy, including any termination or failure to renew.

RULE XXI ANNUAL REPORT (1) Each operator or holder of a prospecting permit shall file copies of an annual report with the department within 30 days of the anniversary date of each permit.

(2) The annual report shall include:

(a) the name and address of the operator and the permit number;

(b) the exact number of acres of land affected by the operation during the preceeding year;

(c) the extent of backfilling and grading performed during the preceeding year;

(d) the extent of vegetative reclamation (seeding or planting) performed during the preceeding year, including:

(i) the type of planting or seeding;

(ii) the mixtures and amounts seeded;

(iii) the species, location, and method of planting for site or species specific plantings;

(iv) the date of seeding or planting;

(v) the area of land planted;

(e) any information on vegetation cover and production required by Rules IX or XVI; and

(f) any other relevant information required by the department.

RULE XXII AREAS UPON WHICH STRIP OR UNDERGROUND COAL MINING IS PROHIBITED (1) Protection of Parks and Historic Sites. In addition to those areas upon which strip or underground mining is specifically prohibited pursuant to section 82-4-227, subject to valid existing rights, no

strip or underground coal mining shall be conducted, unless the operation existed on August 3, 1977:

(a) on any lands upon which the mining would adversely affect any publicly owned park or places included in the National Register of Historic Sites unless mining thereof is approved jointly by the department and the federal, state, or local agency with jurisdiction over the park or historic sites;

(b) on any lands within the National System of Trails.

(2) Definitions. - For the purpose of section 82-4-227 (13), the following definitions shall apply:

(a) "valid existing rights" means:

(i) except for haul roads,

(A) those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce coal; and

(B) the person proposing to conduct strip or underground coal mining operations on such lands either;

(I) had been validly issued, on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or

(II) can demonstrate to the department that the coal is both needed for, and immediately adjacent to, an on-going strip or underground coal mining operation for which all permits were obtained prior to August 3, 1977;

(ii) for haul roads, "valid existing rights" means:

(A) a recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977; or

(B) any other road in existence as of August 3, 1977;

(iii) interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same strip or underground mining operations for which the applicant claims a valid existing right;

(iv) "valid existing rights" does not mean mere expectation of a right to conduct strip or underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a state or federal permit;

(b) "occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation;

(c) "public building" means any structure that is

owned by a public agency or used principally for public business meetings or other group gatherings;

(d) "community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment;

(e) "public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use;

(f) "public road" means any thoroughfare open to the public for passage of vehicles;

(g) "cemetery" means any area of land where human bodies are interred.

(3) Measurement of Distances. For purposes of section 82-4-227(7), all distances shall be measured horizontally.

(4) Procedures.

(a) Upon receipt of a application for a strip or underground coal mining operation permit, the department shall review the application to determine whether strip or underground coal mining operations are limited or prohibited under section 82-4-227(7) or subsection ~~(1)~~ (1) above on the lands which would be disturbed by the proposed operation.

(b) (i) Where the proposed operation would be located on any lands listed in section 82-4-227(7) or (13) (except for proximity to public roads) or subsection (1) ~~(a)~~ above, the department shall reject the application if the applicant has no valid existing rights for the area or if the operation did not exist on August 3, 1977.

(ii) If the department is unable to determine whether the proposed operation is located within the boundaries of any of the lands in section 82-4-227(7) or (13) or subsection (1) above, the department shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state or local government agency for a determination of clarification of the relevant boundaries or distances, along with a request for response within 30 days.

(c) Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haul roads join such right-of-way line) or ~~where the applicant proposes to relocate any public road,~~ the department may permit mining to occur within 100 feet of the road if:

(i) the applicant obtains the necessary approvals of the authority with jurisdiction over the public road;

(ii) a notice in a newspaper of general circulation in the affected locale of a public hearing is provided at least 2 weeks before the hearing;

(iii) an opportunity for a public hearing at which any member of the public may participate is provided in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(iv) a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations is made.

(d) Where the applicant proposes to relocate a public road to facilitate strip or underground mining operations, the road may not be relocated until:

(i) the permit authorizing the operation is granted;

(ii) the applicant obtains the necessary approval from the authority with jurisdiction over the public road;

(iii) a notice in a newspaper of general circulation in the affected locale of a public hearing is provided at least 2 weeks before the hearing;

(iv) an opportunity for a public hearing at which any member of the public may participate is provided in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(v) a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations is made.

(e) Where the proposed strip or underground mining operations would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.

(f) Where the proposed mining operation may adversely affect any public park or any places included on, ~~or eligible for listing on,~~ the National Register of Historic Places, the department shall transmit to the federal, state or local agencies with jurisdiction over or a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing a request for that

agency's approval or disapproval of the operations within 30 days of receipt of the request.

(g) If the department determines that the proposed strip or underground coal mining operation is not prohibited under section 82-4-227(7) or (13) of this rule, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface strip or underground coal mining operations pursuant to Rule XXIII.

RULE XXIII DESIGNATION OF LANDS UNSUITABLE (1) Definitions. For purposes of section 82-4-228, the following definitions shall apply:

(a) "fragile lands" means geographic areas containing natural, scientific or esthetic resources or ecologic relationships that could be damaged or destroyed by strip or underground coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of biologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where strip or underground coal mining operations are prohibited under section 82-4-227 and Rule XXII;

(b) "historic lands" means historic or cultural districts, places, structures or objects, including archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a state or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending;

(c) "natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of strip or underground coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology;

(d) "substantial legal and financial commitments in a strip or underground coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an

existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

(2) Exemptions. The requirements of this rule do not apply to:

(a) lands on which strip or underground coal mining operations were being conducted on August 3, 1977;

(b) lands covered by a permit issued under the Act; or

(c) lands where substantial legal and financial commitments in strip or underground coal mining operations were in existence prior to January 4, 1977.

(3) Exploration on Lands Designated Unsuitable. Designation of any area as unsuitable for all or certain types of strip or underground coal mining operations pursuant to section 82-4-228 and this rule does not prohibit coal ~~exploration~~ prospecting operations in the area, if conducted in accordance with the Act, these rules and other applicable requirements. ~~Exploration~~Prospecting operations on any lands designated unsuitable for strip or underground mining operations must be approved by the department under Rule XIX to insure that exploration does not interfere with any value for which the area has been designated unsuitable for strip or underground coal mining.

(4) Procedure for Designation.

(a) Petition.

(i) Right to Petition. Any person having an interest which is or may be adversely affected has the right to petition the department to have an area designated as unsuitable for strip or underground coal mining operations, or to have an existing designation terminated.

(ii) Contents of Petition. (A) For Designation. The only information that a petitioner need provide is:

(I) the location and size of the area covered by the petition;

(II) allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of strip or underground coal mining operations;

(III) a description of how mining of the area has affected or may adversely affect people, land, air, water or other resources;

(IV) the petitioner's name, address and telephone number; and

(V) identification of the petitioner's interest which is or may be adversely affected.

(B) For Termination. The only information that a petitioner need provide ~~to terminate a designation~~ is:

(I) the location and size of the area covered by the petition;

(II) allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on:

(AA) the nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in section 82-4-228(2) (b); or

(BB) reclamation now being technologically and economically feasible if the designation was based on the criteria found in section 82-4-228(2)(a); or

(CC) the resources or condition not being affected by strip or underground coal mining operations, or in the case of land use plans, not being incompatible with strip or underground coal mining operations during and after mining, if the designation was based on the criteria found in section 82-4-228(2)(b);

(III) the petitioner's name, address and telephone number; and

(IV) identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

(b) Notice and Action on Petition.

(i) (A) Within 30 days of receipt of a petition, the department shall notify the petitioner by certified mail whether or not the petition is complete.

(B) The department shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the department finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(C) The department may reject petitions for designation or terminations of designations which are frivolous. Once the requirements of paragraph (4)(a) are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the department pursuant to the procedures of this rule.

(D) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the department shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the department shall not consider the petition and shall return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(E) If the department determines that the petition is incomplete or frivolous, it shall return the petition to the

petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(F) The department shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.

(G) Any petitions received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the department from issuing a decision on that permit application. The department may return any petition received thereafter to the petitioner with a statement why the department cannot consider the petition. For the purposes of this rule, "close of the public comment" period shall mean at the close of any informal conference held under Rule III, or, if no conference is requested, the close of the period for filing written comments and objections under Rule III.

(ii) (A) Within three weeks after the determination that a petition is complete, the department shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the department to have an interest in the property.

(B) Within three weeks after the determination that a petition is complete, the department shall notify the general public of the receipt of the petition ~~and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the state, and in The Montana public of the receipt of the petition~~ and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the state, and in The Montana Administrative Register.

(iii) Until three days before the department holds a hearing under ~~subsection~~ paragraph (c) below, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(iv) Beginning immediately after a complete petition is filed, the department shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the department. The department shall make the record available for public inspection free of charge and for copying at reasonable cost during all normal business hours at all its offices or, upon request, at a county courthouse or library.

(c) Hearings.

(i) Within 10 months after receipt of a complete petition, the department shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses. The department shall make a verbatim transcript of the hearing.

(ii) (A) The department shall give notice of the date, time, and location of the hearing to:

(I) local, state, and federal agencies which may have an interest in the decision on the petition;

(II) the petitioner and the intervenors; and

(III) any person with an ownership or other interest known to the department in the area covered by the petition.

(B) Notice of the hearing shall be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

(iii) The department shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(iv) The department may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(v) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

(d) Decision.

(i) In reaching its decision, the department shall use:

(A) the information contained in the data base and inventory system provided for in paragraph (5)(a) of this rule;

(B) information provided by other governmental agencies;

(C) the detailed statement prepared under section 82-4-228(3); and

(D) any other relevant information submitted during the comment period.

(ii) A final written decision shall be issued by the department including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The department shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the Regional Director.

(5) (a) Data Base and Inventory System. The department shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The department shall include in the system information relevant to the criteria in section 82-4-228(2), including, but not limited to, information received from the United States Fish and Wildlife Service, the Department of Fish, Wildlife, and Parks, the State Historic Preservation Officer, and Department of Health and Environmental Sciences.

(c) The department shall add to the data base and inventory system information:

(i) on potential coal resources of the state, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the department to prepare the statements required by section 82-4-228(3); and

(ii) that becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

(d) The department shall:

(i) make the information and data base system available to the public for inspection free of charge and for copying at reasonable cost;

(ii) provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of strip or underground coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

(6) Public Information.

(a) The department shall maintain a map of areas designated as unsuitable for all or certain types of strip or underground coal mining operations.

(b) The department shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment.

RULE XXIV INSPECTIONS (1) Frequency. The department shall conduct an average of at least one partial inspection of each mining operation per month and at least one complete inspection of each mining operation per calendar quarter and such periodic partial or complete inspections of prospecting operations as are necessary to ensure substantial compliance with the Act, this subchapter, and the respective permit.

(2) Method of Inspections. Inspections shall occur without prior notice to the permittee, except for necessary on-site meetings, be conducted on an irregular basis, and be scheduled to detect violations on nights, weekends, and holidays. Inspectors shall collect evidence of violations and promptly file with the department inspection reports

adequate to determine whether violations exist.

(3) Availability of Reports. Copies of all records, reports, inspection materials, and information obtained shall be made immediately available to the public at the department office closest to the operation involved ~~or~~ and by mail.

(4) Inspections Based on Citizen Compliants. (a) Any person may request an inspection of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, this subchapter, or the permit, or condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The identity of any person supplying information to the department relating to a possible violation or imminent danger or harm shall remain confidential with the department, if requested by that person, unless that person elects to accompany the inspector on the inspection.

(b) If the report or statement alleges facts that, if true, would constitute a prohibited condition, practice, or violation, and states the basis upon which the facts as known or provides other corroborating evidence sufficent to give the department reason to believe that the prohibited condition, practice or violation exists, the department shall conduct an inspection to determine whether the condition, practice, or violation exists or existed. If the department conducts an inspection pursuant to paragraph (4)(a), it shall notify the person who requested the inspection as far in advance as practicable of when the inspection is to occur. The person who has provided the statement or report shall be allowed to accompany the inspector. The person shall be under supervision and control of the inspector while within the permit area. The person does not have a right to enter buildings without the consent of the person in control of the building or without a search warrant.

(c) Within 10 days of the inspection, or, if there is no inspection, within 15 days of receipt of the citizen's written statement, the department shall send the person and the alleged violator the following:

(i) if an inspection was made, a description of the enforcement action taken, or, if no enforcement action was taken, an explanation of why no enforcement action was taken;

(ii) if no inspection was made, an explanation of the reason why.

(5) Inspections in Response to Notification by the Office of Surface Mining. Whenever the department receives notice from OSM that it has reason to believe that there exists a violation of the act, this subchapter, or the

permit, or a condition or practice that creates an imminent danger to the public or that is causing or can reasonably be expected to cause significant, imminent harm to land, air, or water resources, the department shall make an inspection, determine whether a violation exists, and take appropriate action to correct all such violations, conditions, or practices immediately for imminent, dangerous health or safety or environmental conditions, practices, or violations and within 10 days for other violations.

(6) Service of Process. A notice of violation or cessation order shall be served upon the person to who it is directed or his designated agent promptly after issuance by:

(a) tendering a copy at the operation to a designated agent ~~or~~, to the individual in charge of the operation; or, if the designated agent or person in charge cannot be located at the operation, to any agent or employee at the operation;

(b) sending a copy of the notice or order by certified mail to the permittee or his designated agent; or

(c) hand delivery of a copy of the notice or order to the permittee or his designated agent. Designation of an agent other than the agent named in the application permit for service of process may be made by filing with the department a written designation signed by the former designated agent.

(7) Informal Hearing. (a) Except as provided in Paragraphs (b) and (c) below, a notice of violation or cessation order which requires cessation of mining or prospecting, expressly or by necessary implication, expires within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that the alleged violation may be viewed during the hearing or at any other location acceptable to the department and the person to whom the notice or order was issued. The departmental office nearest to the mine site shall be deemed to be reasonable close to the mine site unless a closer location is requested and agreed to by the department. For purposes of this subsection, "mining" means extracting coal from the earth or ~~coal~~ waste piles and transporting it within or from the permit area.

(b) A notice of violation or cessation order shall not expire as provided in Paragraph (a) of this section if the condition, practice or violation in question has been abated or if the informal public hearing has been waived.

(c) The department shall file as much advance notice as is practicable of the time, place and subject matter of the informal public hearing to:

(i) the person to whom the notice or order was issued;

(ii) any person who filed a report which led to that notice or order.

(d) The department shall also post notice of the hearing at its office closest to the mine site, and issue a news release notice, regarding the informal conference, where practicable, to a newspaper of general circulation in the area of the mine.

(e) An informal public hearing shall be conducted by a representative of the department who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within 5 days after the close of the informal public hearing the department shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(i) the person to whom the notice or order was issued; and

(ii) any person who filed a report which led to the notice or order.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under sections 82-4-251(3), or 251(6), or 254(2). At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing shall be introduced as evidence or to impeach a witness.

(8) Inability to Comply. No cessation order or notice of violation may be vacated because of inability to comply. Inability to comply may not be considered in determining whether a pattern of violations exists.

(9) Continuation of Some Operations. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

RULE XXV SUSPENSION AND REVOCATION OF PERMITS ~~(1) Definitions.--In implementing section 82-4-251(3), the following definitions shall apply:~~

~~(a)--"Willful violation" means an act or omission which violates the Act or this subchapter or any permit condition and which is committed by a person or his agent who intends the result which occurs.~~

~~--- (b)--"Unwarranted failure to comply" means the failure of the permittee or his agent to prevent the occurrence of any violation of the Act, this subchapter, or the permit due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any such violation because of indifference, lack of diligence, or lack of reasonable care~~

~~(2)~~ (1) Determination of Pattern of Violations. In implementing section 82-4-251(3), the department:

(a) may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any 12-month period, after considering the circumstances, which circumstances shall include:

(i) the number of violations, cited on more than one occasion, of the same or related requirements of the Act, this subchapter, or the permit;

(ii) the number of violations, cited on more than one occasion, of different requirements of the Act, this subchapter, or the permit; and

(iii) the extent to which the violations were isolated departures from lawful conduct; and

(b) shall determine that a pattern of violations exists if it finds that there were violations of the same or related requirements during 3 or more inspections of the permit area within any 12-month period.

~~(3)~~(2) Notice of Show Cause Order. At the same time as the issuance of a show cause order pursuant to section 82-4-251(3) the department shall:

(a) if practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of operations; and

(b) post notice at the departmental office closest to the operations.

~~(4)~~(3) Show Cause Hearing. If the permittee files an answer to the show cause order and requests a hearing, a public hearing shall be held. The department shall give 30 days written notice of the date, time, and place to the permittee and any intervenors and, if practicable, publish notice in a newspaper of general circulation in the area of the operations and shall post the notice in the departmental office closest to those operations. The department shall issue a decision within 60 days of hearing.

~~(5)~~(4) Service. A show cause order shall be served in the same manner as a notice of violation pursuant to Rule XXIV.

(5) Effect of Suspension or Revocation. If a permit has been suspended or revoked, the permittee may not conduct any operations or prospecting on the permit area and shall:

(a) if the permit is revoked, complete reclamation within the time specified in the order;

(b) if the permit is suspended, complete all affirmative obligations to abate all conditions, practices, or violations, as specified in the order.

RULE XXVI SMALL MINER ASSISTANCE PROGRAM

(1) Program Services. To the extent possible with available federal funds, the department shall for qualified small operators who request assistance:

(a) select and pay a qualified laboratory to:

(i) determine for the operator the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with subsection (5);

(ii) prepare a statement of the results of test borings or core samplings in accordance with subsection (5);

(b) collect and provide general hydrology information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

(2) Eligibility for Assistance. An applicant is eligible for assistance if he:

(a) intends to apply for a permit pursuant to the Act; and

(b) establishes that the probable total actual and attributed production of the applicant for each year of the permit will not exceed 100,000 tons; production from the following operations shall be attributed to the permittee:

(i) all coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or in any other manner whatsoever, by the applicant;

(ii) the pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the applicant owns more than a 5 percent interest;

(iii) all coal produced by persons who own more than 5 percent of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management or in any other manner whatsoever.

(iv) the pro rata share of coal produced by operations owned or controlled by the person who owns or controls the applicant.

(3) Filing for Assistance. Each applicant shall submit the following information to the department:

(a) a statement of intent to file a permit application;

(b) the names and addresses of:

(i) the potential permit applicant; and

(ii) the potential operator if different from the applicant;

(c) a schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant. The schedule shall include for each location:

(i) the name under which coal is or will be mined;

(ii) the permit number and Mining Enforcement and Safety Administration identification number if the mine is operating;

(iii) the actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant; and

(iv) the estimated coal production for each year of the proposed permit and that portion attributed to the applicant;

(d) a description of:

(i) the method of strip or underground coal mining operation proposed;

(ii) the anticipated starting and termination dates of mining operations;

(iii) the number of acres of land to be affected by the proposed mining; and

(iv) a general statement on the probable depth and thickness of the coal resource;

(e) a U.S. Geological Survey topographic map of 1:24,000 scale or larger or other topographic map of equivalent detail which clearly shows:

(i) the area of land to be affected and the natural drainage above and below the affected area;

(ii) the names of property owners within the area to be affected and of adjacent lands;

(iii) the location of existing structures and developed water sources within the area to be affected and on adjacent lands;

(iv) the location of existing and proposed test boring or core samplings; and

(v) the location and extent of known working of any underground mines;

(f) copies of documents which show that:

(i) the applicant has a legal right to enter and commence mining within the permit area; and

(ii) a legal right of entry has been obtained for the department and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

(4) Application Approval and Notice.

(a) If the department finds the applicant eligible, and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

(i) determine the minimum data requirements necessary to meet the provisions of subsection (5);

(ii) select the services of one or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work shall be provided to the applicant.

(b) The department shall inform the applicant in writing if the application is denied and shall state the reason for denial.

(c) The granting of assistance under this part shall not be a factor in decisions by the department on a subsequent permit application.

(5) Data Requirements.

(a) Determination of Requirements. The department shall determine the data collection requirements for each applicant based on:

(i) the extent of currently available hydrologic and core analysis data for the applicable area; and

(ii) the data collection and analysis guidelines developed and provided by the Office of Surface Mining.

(b) Specific Provisions.

(i) A determination of the probable hydrologic consequencies of the mining and reclamation operations, both on- and off-site, shall be made by a qualified laboratory. The data for this determination shall include:

(A) the existing and projected surface and ground water level and water table evaluations; the department shall specify duration and return frequencies to be used in the determination;

(B) the existing and projected seasonal quality of the surface and groundwater regime; this shall include measurements and estimates of dissolved and suspended solids, pH, iron, manganese, surface and channel erosion and other water quality parameters specified by the department.

(ii) The applicant shall include a statement of the results of test borings or core samplings from the proposed permit area, including:

(A) logs from any drill holes including identification of each stratum and water level penetrated;

(B) the coal seam thickness and its chemical analysis including sulphur content; and

(C) the chemical analysis of potentially acid or toxic forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined.

(c) Exemptions. The statement by a qualified laboratory under paragraph (b)(ii) of this subsection may be waived by the department by a written determination that such requirements are unnecessary with respect to the specific permit application.

(d) Data Availability. Data collected under this program shall be made available to all interested persons. ~~except-information-related-to-the-chemical-and-physical properties-of-coal.--Information-regarding-the-mineral-or elemental-content-of-the-coal-which-is-potentially-toxic in-the-environment-shall-be-made-available.~~

(6) Qualified Laboratories.

(a) Designation. The department shall designate qualified laboratories. Persons who desire to be included in the list of qualified laboratories established by the department shall apply to the department and provide such information as is necessary to establish the qualifications required by paragraph (b) of this subsection.

(b) Basic Qualifications.

(i) To qualify for designation a laboratory shall demonstrate that it:

(A) is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed;

(B) is capable of collecting necessary field data and samples;

(C) has adequate space for material preparation, cleaning and sterilizing necessary equipment, stationary equipment, storage, and space to accommodate periods of peak work loads.

(D) meets the requirements of the Department of Labor and Industry Safety and Health Bureau;

(E) has the financial capability and business organization necessary to perform the work required;

(F) has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in:

(I) Standard Methods for the Examination of Water and Waste Water, 14th Edition, 1975. This publication is available from the American Public Health Association, 1015 18th Street, NW, Washington, D.C. 20036;

(II) Methods for Chemical Analysis of Water and Wastes, 1974. This publication is available from the Office of Technology Transfer, U.S. Environmental Protection Agency, Industrial Environmental Research Laboratory, Cincinnati, Ohio 45268; these standards are hereby incorporated by reference;

(G) has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate methods or guidelines for data acquisition recommended by the department.

(ii) To become qualified, a laboratory must be capable of performing either the determination or statement under paragraphs (5)(b)(i)(ii). Subcontractors may be used to provide the services required provided their use is defined in the application for designation and approved by the department.

(7) Assistance Funding.

(a) Use of Funds. Funds authorized for this program shall not be used to cover administrative costs or the costs of test boring or core sampling.

(b) Allocation of funds. The department shall to the extent practicable establish a formula for allocating funds among eligible small operators if available funds are less than those required to provide the services. This formula shall include such factors as the applicant's:

(i) anticipated date of filing a permit application;
(ii) anticipated date for commencing mining; and
(iii) performance history.
(8) Applicant Liability.
(a) The applicant shall reimburse the department for the cost of the laboratory services performed pursuant to this rule if the applicant:
(i) submits false information;
(ii) fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report;
(iii) fails to mine after obtaining a permit; or
(iv) produces coal in excess of 100,000 tons during any year of mining under the permit for which the assistance is provided.
(b) The department may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

RULE XXVII ABANDONED MINE LAND RECLAMATION PROGRAM

(1) Definitions. For the purposes of this rule the following definitions shall apply:
(a) "abandoned Mine Land Reclamation Fund" means a separate fund established pursuant to sections 82-4-242, 82-4-323 and 82-4-424 for the purpose of accounting for monies granted by the Office of Surface Mining under an approved State Reclamation Program and other monies authorized by these regulations to be deposited in the Abandoned Mine Reclamation Fund;
(b) "emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures;
(c) "expended" means that monies have been paid out by the department for work that has been accomplished or services rendered;
(d) "extreme danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed;
(e) "Fund" means the Abandoned Mine Land Reclamation Fund;
(f) "left or abandoned in either an unreclaimed or inadequately reclaimed condition" means lands and water:
(i) where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, the permit has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and

(ii) which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public;

(g) "Montana Abandoned Mine Reclamation Plan" means a plan approved by the Office of Surface Mining under 30 CFR Part 884;

(h) "Montana Abandoned Mine Reclamation Program" means a program established by the Board in accordance with 30 CFR Part 870 and 30 CFR Part 880 for reclamation of land and water adversely affected by past mining;

(i) rReclamation activities" means restoration, reclamation, abatement, control, or prevention of adverse effects of mining.

(2) Montana Abandoned Mine Land Reclamation Fund.

(a) An account to be known as the Abandoned Mine Land Reclamation Fund is established by the department and shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the Fund shall include:

(i) amounts granted to the state by Office of Surface Mining for purposes of conducting the Montana Abandoned Mine Reclamation Plan;

(ii) monies collected by the department from charges for uses of lands acquired or reclaimed with monies from the Montana Abandoned Mine Fund under subsection 8 of this rule;

(iii) monies recovered by the department through the satisfaction of liens filed against privately owned lands reclaimed with monies from the Fund;

(iv) monies recovered by the department from the sale of lands acquired with monies from the Fund; and

(v) such other monies as the department deposits in the Fund for use in carrying out the Montana Abandoned Mine Reclamation Program.

(c) Monies deposited in the Fund shall be used to carry out the Montana Abandoned Mine Reclamation Plan.

(3) Eligible Lands and Water. Lands and water within Montana are eligible for abandoned mine land reclamation activities if:

(a) they were mined for coal or affected by coal mining processes;

(b) they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(c) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under state or federal statutes as a result of bond forfeiture. Bond forfeiture renders lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of

the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the Fund may be sought.

(4) Reclamation objectives and priorities. Abandoned mine land reclamation projects shall meet one or more of the objectives stated in this subsection. The objectives are stated in the order of priority with the highest priority first. Preference among those projects competing for available resources shall be given to projects meeting higher of the following priority objectives:

(a) protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past coal mining practices;

(b) protection of public health, safety, and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger;

(c) restoration of eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;

(d) research and demonstration projects relating to the development of strip or underground coal mining reclamation and water quality control program methods and techniques;

(e) protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices;

(f) development of publicly owned land adversely affected by past coal mining practices, including land acquired under subsection 7 of this rule for recreation and historic purposes, conservation, and historic purposes, conservation and reclamation purposes and open space benefits;

(g) those priorities listed in Rule XXIX(4)(b)-(d) and Rule XXX(4)(b)-(d).

(h) construction of public facilities in communities impacted by coal development if the Governor certifies that all other objectives of the fund have been met, the available impact funds are inadequate, and the board concurs.

(5) Reclamation Project Evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this subsection. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under subsection 4 of this rule. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors include:

(a) the need for reclamation work to accomplish one or more specific reclamation objectives as stated in subsection 4 of this rule;

(b) the availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts;

(c) the specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include, but are not limited to:

(i) protection of human life, health, or safety;

(ii) protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources;

(iii) protection of public or private property;

(iv) abatement of adverse social and economic impacts of past coal mining on persons or property including employment, income and land values or uses, or assistance to persons disabled, displaced, or dislocated by past mining practices;

(v) improvement of environmental conditions which may be considered to generally enhance the quality of human life;

(vi) improvement of the use of natural resources, including post-reclamation land uses which:

(A) increase the productive capability of the land to be reclaimed;

(B) enhance the use of surrounding lands consistent with existing land use plans;

(C) provide for construction or enhancement of public facilities;

(D) provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located;

(vii) demonstrate to the public and industry methods and technologies which can be used to reclaim areas disturbed by mining;

(d) the acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation;

(e) the costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;

(f) the availability of additional coal or other types of mineral or material resources within the project area which:

(i) results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

(ii) requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations;

(g) the acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with the applicable state, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located;

(h) the probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed.

(6) Consent to Entry.

(a) The department shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or his authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. The statement may not include any commitment by the department to perform reclamation work nor to compensate the owner for entry.

(b) If the owner of the land to be entered for purpose of study or exploration will not provide consent to entry, the department may give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice may be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

(c) The department shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by 82-4-239(4). If the owner is not known, notice shall be

posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

(7) Land Eligible for Acquisition.

(a) Land adversely affected by past coal mining practices, including coal disposal sites and all coal refuse piles thereon, may be acquired with monies from the Abandoned Mine Land Reclamation Fund if approved in advance by the Regional Director, and when acquisition of the lands meets the requirements of section 82-4-239.

(b) The department, when acquiring land under this rule, shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(i) state law will not allow severance of such interests from the surface estate; or

(ii) such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and

(iii) adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

(c) Procedures for Acquisition.

(i) The department shall obtain an appraisal of the fair market value of all land or interest in land to be acquired from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-Agency Land Acquisition Conference, 1973).

(ii) When practical, acquistion shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(iii) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(iv) When acquiring land under this part the board shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq'41 CFR Part 114-50; Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, I SRM 6.1 et seq; and regulations of the Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for Federal public purposes.

(e) Acceptance of Gifts of Land.

(i) The board may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

(ii) Offers to make a gift of such land or interest in land shall be in writing and shall include:

(A) a statement of the interest which is being offered;

(B) a legal description of the land and a description of any improvements on it;

(C) a description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;

(D) a statement that:

(I) the offeror is the record owner of the interest being offered;

(II) the interest offered is free and clear of all encumbrances except as clearly stated in the offer;

(III) there are no adverse claims against the interest offered;

(IV) there are no unredeemed tax deeds outstanding against the interest offered; and

(V) there is no continuing responsibility by the operator under state or federal statutes for reclamation;

(E) an itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(iii) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Montana Strip and Underground Mine Reclamation Act." Title to donated land shall be in the name of the state of Montana.

(8) Management of Acquired Lands.

(a) Land acquired under this rule may be used pending disposition under subsection (9) of this rule for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.

(b) Any user of land acquired under this rule shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the department for providing the benefit, whichever is appropriate.

(c) All use fees collected shall be deposited in the

Fund in accordance with subsection (2) of this rule unless previously appropriated by the legislature for the specific purpose of operating and maintaining improvement of the land.

(9) Disposition of Reclaimed Lands.

(a) Prior to the disposition of any land acquired under this rule the board shall:

(i) publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted~~.~~ ~~The~~ notice shall also state that a public hearing will be ~~held~~ if requested by any person;

(ii) hold a public hearing if requested as a result of the public notice, which hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate;

(iii) make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regulations which apply.

(b) The board may transfer, with approval of the Regional Director, the administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(i) the purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(ii) that the administrative responsibility for the land will revert to the department if, at any time in the future, the land is not used for the purposes specified.

(c) The board with the approval of the Regional Director may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, state, or federal land use plans for the area in which the land is located. Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum:

(A) publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located~~.~~ ~~The~~ notice shall describe the land to be sold, state the ~~appraised~~ value, state any restrictive covenants which will be condition of the sale, and state the time and place of the sale; and

(B) provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(d) All monies received from disposal of land under this subsection shall be deposited in the Fund.

(10) Reclamation on Private Land.

(a) Operations on Private Land. Reclamation activities may be carried out on private land if a consent to enter is obtained under subsection (6) or if entry is made under section 82-4-239(4).

(b) Appraisals.

(i) A notarized appraisal of the full market value of private land to be reclaimed shall be obtained by the board from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisitions" Conference 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the full market value of the land as adversely affected by past mining.

(ii) An appraisal of the full market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with paragraph (b)(i) of this subsection and shall state the market value of the land as reclaimed.

(iii) The landowner is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses and notice of whether a lien will or will not be filed in accordance with section 82-4-239(5).

(iv) Appraisals for privately owned land which fall under subsections 7 and 10 of this rule may be obtained from either an independent or staff professional appraiser.

(c) Liens.

(i) The department may place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the appraisals obtained under paragraph (b) above.

(A) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(B) The department may waive filing of the lien if the cost of filing it, including indirect costs to the depart-

ment, exceeds the increase in fair market value as a result of reclamation activities.

(C) The department may waive filing of the lien if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

(ii) If a lien is to be filed, the department shall, within 6 months after completion of the reclamation work, file a statement in the office of the county clerk and recorder of the county in which the property is located. Such statement shall consist of an account of monies expended for the reclamation work, together with notarized copies of the appraisals obtained under paragraph (6) above.

(d) Renewal. The department shall maintain or renew a lien on private property from time to time as may be required under law.

(e) Disposition of Monies. Monies derived from the satisfaction of liens established under this part shall be deposited in the Montana Abandoned Mine Reclamation Fund.

RULE XXVIII RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS (1) Responsibilities. (a) Of the Commissioner. The commissioner shall:

(i) provide advice, assistance, and guidance to all state employees, to determine if the employee is required to file statements pursuant to this rule;

(ii) promptly review the statement of employment and financial interests and supplements, if any, filed by each employee to determine if the employer has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in a strip or underground mining operation;

(iii) resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the Regional Director who is responsible for initiating action to impose the penalties of the act;

(iv) certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(v) submit to the Regional Director such statistics and information as he or she may request to enable preparation of the required annual report to Congress;

(vi) submit to the director Dhe initial listing and the subsequent annual listings of positions as required in this rule;

(vii) furnish a blank statement 45 days in advance of the filing date established in this rule to each employee required to file a statement;

(viii) inform annually each employee required to file a statment of the person whom they may contact for advice and counseling; and

(ix) comply with paragraph (b)(i) and (b)(ii) below.

(b) Of Department Employees. Department employees performing any duties or functions under the Act shall:

(i) have no direct or indirect financial interest in coal mining operations;

(ii) file a fully completed statement of employment and financial interest or upon entrance to duty and annually thereafter on the specified filing date; and

(iii) comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

(2) Definitions. For purposes of this rule, the following terms shall mean the following:

(a) "coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such ~~activities~~ operations occur;

(b) "direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships;

(c) "indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee should not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest;

(d) "prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

(3) Filing Requirements.

(a) General Requirements.

(i) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests.

(ii) The commissioner shall prepare a list of those positions within the department and the title of bureaus or divisions within the department which do not perform any functions or duties under the Act.

(iii) The commissioner shall submit to the Regional Director the listing of positions that do not involve performance of any functions or duties under the Act.

(iv) The commissioner shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Regional Director and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Regional Director no later than September 30 of each year. The commissioner may revise the listing by the addition or deletion of positions at any time he determines such revisions are required to carry out the purpose of the law or this rule. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

(b) Time of Filing.

(i) Employees performing functions or duties under the Act shall file annually on February 1 of each year.

(ii) New employees hired, appointed, or transferred to perform functions or duties under the Act shall file at the time of entrance to duty.

(iii) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within 2 months after their initial statement was filed.

(c) Place of Filing. The commissioner shall file his or her statement with the Regional Director. All other employees shall file their statement with the commissioner.

(d) Contents of Statement.

(i) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are fulltime residents of the employee's home. The report shall be on OSM Form 705-1.

(ii) The employee shall set forth the following information regarding any financial interest:

(A) Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the department.

(B) Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in strip or underground coal mining operations.

(C) Real Property. Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(D) Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(iii) The statement shall provide for a signed certification by the employee that to the best of his or her knowledge, none of the listed financial interests represent an interest in a strip or underground coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and the information shown on the statement is true, correct, and complete. The exceptions shown in the employee certification of the form must provide enough information for the commissioner to determine the existence of a direct or indirect financial interest. Accordingly, the certification form must:

(A) list the financial interests;

(B) show the number of shares, estimated value or annual income of the financial interests; and

(C) include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(iv) An employee is expected to:

(A) have a complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and

(B) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(v) Failure to File Statement. Failure to file the statement of employment and financial interest as required in (b) (ii) subjects the employee to removal from his or her position.

~~(e)~~(4) Gifts and Gratuities.

~~(i)~~(a) Except as provided in paragraph ~~(e)(ii)~~ (b) of this subsection, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which:

~~(A)~~(i) conducts or is seeking to conduct operations ~~or activities~~ that are regulated by the department; or

~~(B)~~(ii) has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

~~(ii)~~(b) The prohibitions in paragraph ~~(e)(i)~~(a) of this subsection do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

~~(A)~~(i) food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

~~(B)~~(ii) unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) An employee who violates any of the provisions of this subsection shall be subject to suspension without pay for a single violation and termination for repeated violations in accordance with existing rules on policies for termination and suspension.

~~(4)~~(5) Resolution of Prohibited Interests of Employees.~~:~~

(a) If an employee has a prohibited financial interest, the commissioner shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(b) Remedial action may include:

(i) reassignment of the employee to a position which performs no function or duty under the Act; or

(ii) divestiture of the prohibited financial interest; or

(iii) other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(c) Failure of the employee to comply with an order of the commissioner to resolve the prohibited financial interest may result in suspension or termination of the employee subject to appeals ~~as provided by the Department of administration,~~ to the board. Employees have 30 calendar days to exercise this right before disciplinary action is initiated.

~~(d)~~(6) Resolution of Prohibited Financial Interests of The Commissioner. (a) The governor shall promptly advise the commissioner that remedial action which will resolve the prohibited interest is required within 90 days. Remedial action for the commissioner should be consistent with the procedures prescribed for other state employees.

~~(e)~~(b) If the commissioner fails to resolve a prohibited financial interest as directed by the governor, the governor shall immediately report this fact to the Regional Director and shall take whatever further action he deems appropriate.

RULE XXIX ABANDONED MINE LAND RECLAMATION PROGRAM

(1) Definitions. For the purposes of this rule the following definitions shall apply:

(a) "abandoned Mmine Lland Rreclamation Ffund" means a separate fund established pursuant to sections 82-4-242, 82-4-323 and 82-4-424 for the purpose of accounting for monies granted by the Office of Surface Mining under an approved State Reclamation Program and other monies authorized by these regulations to be deposited in the Abandoned Mine Reclamation Fund;

(b) "emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures;

(c) "expended" means that monies have been paid out by the department for work that has been accomplished or services rendered;

(d) "extreme danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed;

(e) "Fund" means the Abandoned Mine Land Reclamation Fund;

(f) "left or abandoned in either an unreclaimed or inadequately reclaimed condition" means lands and water:

(i) where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, the permit has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and

(ii) which continue, in their present condition, to substantially degrade the quality of the environment, prevent, or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

(g) "Montana Abandoned Mine Reclamation Plan" means a

plan approved by the Office of Surface Mining under 30 CFR Part 884;

(h) "Montana Abandoned Mine Reclamation Program" means a program established by the Board in accordance with 30 CFR Part 870 and 30 CFR Part 880 for reclamation of land and water adversely affected by past mining;

(i) "reclamation activities" means restoration, reclamation, abatement, control, or prevention of adverse effects of mining;

(j) "Regional Director" means the Director of the Region V office of the Office of Surface Mining or the Director's representative.

(2) Montana Abandoned Mine Land Reclamation Fund.

(a) An account to be known as the Abandoned Mine Land Reclamation Fund is established by the department and shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the Fund shall include:

(i) amounts granted to the state by U.S. Department of Interior's Office of Surface Mining for purposes of conducting the Montana Abandoned Mine Reclamation Plan;

(ii) monies collected by the department from charges for uses of lands acquired or reclaimed with monies from the Montana Abandoned Mine Reclamation Fund under subsection 8 of this rule;

(iii) monies recovered by the department from the sale of lands acquired with monies from the Fund; and

(iv) such other monies as the department deposits in the Fund for use in carrying out the Montana Abandoned Mine Reclamation Program.

(c) Monies deposited in the Fund shall be used to carry out the Montana Abandoned Mine Reclamation Plan.

(3) Eligible Lands and Water. Lands and water within Montana are eligible for abandoned mine land reclamation activities if:

(a) they were mined for metal (hard rock) minerals or affected by metal (hard rock) mining processes;

(b) they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(c) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under state or federal statutes as a result of bond forfeiture. Bond forfeiture renders lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the Fund may be sought; and

(d) the department finds in writing that:

(i) the conditions of paragraphs (a)(b) and (c) of this subsection have been met;

(ii) the reclamation has been requested by the governor;

(iii) all reclamation with respect to abandoned coal mine land and water has been acomplished within Montana or the metal (hard rock) reclamation is necessary for the protection of the public health and safety; and

(iv) monies allocated to Montana under 30 CFR 872.11(b)(2) and (3) are available for the work.

(4) Reclamation Objectives and Priorities. Abandoned mine land reclamation projects shall meet one or more of the objectives stated in this subsection. The objectives are stated in the order of priority with the highest priority first. Preference among those projects competing for available resources shall be given to projects meeting the higher of the following priority objectives:

(a) all those priorities listed in Rule XVII(4)(a)-(f) have all been fulfilled;

(b) protection of the public from hazards endangering life and property resulting from the adverse effects of past metal (hard rock) or mining practices. However, upon the request of the governor, such work may be undertaken before the priorities listed in Rule XVII(4)(a)-(f) have been fulfilled;

(c) protection of the public from hazards to health and safety from the adverse effects of past metal (hard rock) mining practices;

(d) restoration of the environment degraded by the adverse effects of past metal (hard rock) mining; and

(e) the priority listed in Rule XVII(4)(h).

(5) Reclamation Project Evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this subsection. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under subsection 4 of this rule. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors include:

(a) the need for reclamation work to accomplish one or more specific reclamation objectives as stated in subsection 4 of this rule;

(b) the availability of technology to accomplish the reclamation work with reasonable assurance of success; in the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts;

(c) the specific benefits of reclamation which are

desirable in the area in which the work will be carried out; benefits to be considered include, but are not limited to:

(i) protection of human life, health, or safety;

(ii) protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources;

(iii) protection of public or private property;

(iv) abatement of adverse social and economic impacts of past mining on persons or property including employment, income and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices;

(v) improvement of environmental conditions which may be considered to generally enhance the quality of human life;

(vi) improvement of the use of natural resources, including post-reclamation land uses which:

(A) increase the productive capability of the land to be reclaimed;

(B) enhance the use of surrounding lands consistent with existing land use plans;

(C) provide for construction or enhancement of public facilities;

(D) provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located;

(vii) demonstrate to the public and industry methods and technologies which can be used to reclaim areas disturbed by mining;

(d) the acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation;

(e) the costs of reclamation; eConsideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;

(f) the availability of additional mineral or material resources within the project area which:

(i) results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

(ii) requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations;

(g) the acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with the applicable state, regional, and

local land use plans and laws, and the needs and desires of the community in which the project is located;

(h) the probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed.

(6) Consent to Entry. The department must obtain written permission from the owner of record of the land or property to be entered in advance of such entry.

(7) Land Eligible for Acquisition.

(a) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entry ways or reclaim surface impacts of metal (hard rock) mines may be acquired by the department when approved by the Regional Director.

(b) The department, when acquiring land under this rule, shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(i) state law will not allow severance of such interests from the surface estate; or

(ii) such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and

(iii) adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

(c) Procedures for Acquisition.

(i) The department shall obtain an appraisal of the fair market value of all land or interest in land to be acquired from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-Agency Land Acquisition Conference 1973.)

(ii) Acquistion shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(iii) When acquiring land under this part the board shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq; 41 CFR Part 114-50; Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, I SRM 6.1 et seq; and regulations of the Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for federal public purposes.

(e) Acceptance of Gifts of Land.

(i) The board may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

(ii) Offers to make a gift of such land or interest in land shall be in writing and shall include:

(A) a statement of the interest which is being offered;

(B) a legal description of the land and a description of any improvements on it;

(C) a description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;

(D) a statement that:

(I) the offeror is the record owner of the interest being offered;

(II) the interest offered is free and clear of all encumbrances except as clearly stated in the offer;

(III) there are no adverse claims against the interest offered;

(IV) there are no unredeemed tax deeds outstanding against the interest offered; and

(V) there is no continuing responsibility by the operator under state or federal statutes for reclamation;

(E) an itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(iii) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Montana Hard Rock Mining Act." Title to donated land shall be in the name of the state of Montana.

(8) Management of Acquired Lands.

(a) Land acquired under this rule may be used pending disposition under subsection (9) of this rule for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.

(b) Any user of land acquired under this rule shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the department for providing the benefit, whichever is appropriate.

(c) All use fees collected shall be deposited in the Fund in accordance with subsection 2 of this rule unless previously appropriated by the legislature for the specific purpose of operating and maintaining improvement of the land.

(9) Disposition of Reclaimed Lands.

(a) Prior to the disposition of any land acquired under this rule, the board shall:

(i) publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted~~.~~ ~~The~~ notice shall also state that a public hearing will be held if requested by any person;

(ii) hold a public hearing if requested as a result of the public notice, which hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate;

(iii) make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regulations which apply.

(b) The board may transfer, with approval of the Regional Director, the administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(i) the purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(ii) that the administrative responsibility for the land will revert to the department if, at any time in the future, the land is not used for the purposes specified.

(c) The board with the approval of the Regional Director may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, state, or federal land use plans for the area in which the land is located. Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum:

(A) publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located~~.~~ The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be condition of the sale, and state the time and place of sale; and

(B) provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(d) All monies received from disposal of land under this subsection shall be deposited in the Fund.

(10) Reclamation on Private Land. Reclamation activities may be carried out on private land if a consent to enter is obtained from the owner.

RULE XXX ABANDONED MINE LAND RECLAMATION PROGRAM

(1) Definitions. For the purposes of this rule the following definitions shall apply:

(a) "abandoned Mmine Lland Rreclamation Ffund" means a separate fund established pursuant to sections 82-4-242, 82-4-323 and 82-4-424 for the purpose of accounting for monies granted by the Office of Surface Mining under an approved State Reclamation Program and other monies authorized by these regulations to be deposited in the Abandoned Mine Reclamation Fund;

(b)"eEmergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures;

(c) "expended" means that monies have been paid out by the department for work that has been accomplished or services rendered;

(d) "extreme danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed;

(e) "Fund" means the Abandoned Mine Land Reclamation Fund;

(f) "left or abandoned in either an unreclaimed or inadequately reclaimed condition" means lands and water:

(i) where all mining processes ceased and no current contract for continuing operations existed as of August 3, 1977, or, if a contract did exist on that date, but all mining processes had ceased, the contract has since lapsed and has not been renewed or superseded by a new contract as of the date of the request for reclamation assistance; and

(ii) which continue, in their present condition, to substantially degrade the quality of the environment, prevent, or damage the beneficial use of land or water resources, or endanger the health or safety of the public;

(g) "Montana Abandoned Mine Reclamation Plan" means a plan approved by the Office of Surface Mining under 30 CFR Part 884;

(h) "Montana Abandoned Mine Reclamation Program" means a program established by the board in accordance with 30 CFR Part 870 and 30 CFR Part 880 for reclamation of land and water adversely affected by past mining;

(i) "reclamation activities" means restoration, reclamation, abatement, control, or prevention of adverse effects of mining;

(j) "Regional Director" means the Director of the Region V office of the Office of Surface Mining or the Director's representative.

(2) Montana Abandoned Mine Land Reclamation Fund.

(a) An account to be known as the Abandoned Mine Land Reclamation Fund is established by the department and shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the Fund shall include:

(i) amounts granted to the state by U.S. Department of Interior's Office of Surface Mining for purposes of conducting the Montana Abandoned Mine Reclamation Plan;

(ii) monies collected by the department from charges for uses of lands acquired or reclaimed with monies from the Montana Abandoned Mine Reclamation Fund under subsection 8 of this rule;

(iii) monies recovered by the department from the sale of lands acquired with monies from the Fund; and

(iv) such other monies as the department deposits in the Fund for use in carrying out the Montana Abandoned Mine Reclamation Program.

(c) Monies deposited in the Fund shall be used to carry out the Montana Abandoned Mine Reclamation Plan.

(3) Eligible Lands and Water. Lands and water within Montana are eligible for abandoned mine land reclamation activities if:

(a) they were subject to opencut mining or affected by opencut mining processes;

(b) they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(c) there is no continuing responsibility for reclamation by the operator, contractee, or agent of the contractee under state or federal statutes as a result of bond forfeiture. Bond forfeiture renders lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the Fund may be sought; and

(d) the department finds in writing that:

(i) the conditions of paragraphs (a), (b), and (c) of this subsection have been met;

(ii) the reclamation has been requested by the governor;

(iii) all reclamation with respect to abandoned coal mine land and water has been acomplished within Montana or

the opencut mining reclamation is necessary for the protection of the public health and safety; and

(iv) monies allocated to Montana under 30 CFR 872.11(b)(2) and (3) are available for the work.

(4) Reclamation Objectives and Priorities. Abandoned mine land reclamation projects shall meet one or more of the objectives stated in this subsection. The objectives are stated in the order of priority with the highest priority first. Preference among those projects competing for available resources shall be given to projects meeting the higher of the following priority objectives;

(a) all those priorities listed in Rule XVII(4)(a)-(f) have all been fulfilled;

(b) protection of the public from hazards endangering life and property resulting from the adverse effects of past opencut mining or mining practices. However, upon the request of the governor, such work may be undertaken before the priorities listed in Rule XVII(4)(a)-(f) have been fulfilled;

(c) protection of the public from hazards to health and safety from the adverse effects of past opencut mining practices;

(d) restoration of the environment degraded by the adverse effects of past opencut mining; and

(e) the priority listed in Rule XVII(4)(h).

(5) Reclamation Project Evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this subsection. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under subsection 4 of this rule. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors include:

(a) the need for reclamation work to accomplish one or more specific reclamation objectives as stated in subsection (4) of this rule;

(b) the availability of technology to accomplish the reclamation work with reasonable assurance of success; in the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts;

(c) the specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include, but are not limited to:

(i) protection of human life, health, or safety;

(ii) protection of the environment, including air and

water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources;

(iii) protection of public or private property;

(iv) abatement of adverse social and economic impacts of past mining on persons or property including employment, income and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices;

(v) improvement of environmental conditions which may be considered to generally enhance the quality of human life;

(vi) improvement of the use of natural resources, including post-reclamation land uses which:

(A) increase the productive capability of the land to be reclaimed;

(B) enhance the use of surrounding lands consistent with existing land use plans;

(C) provide for construction or enhancement of public facilities;

(D) provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located;

(vii) demonstrate to the public and industry methods and technologies which can be used to reclaim areas disturbed by mining;

(d) the acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation;

(e) the costs of reclamation; consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;

(f) the availability of additional mineral or material resources within the project area which:

(i) results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

(ii) requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations;

(g) the acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with the applicable state, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located;

(h) the probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed.

(6) Consent to Entry. The department must obtain written permission from the owner of record of the land or property to be entered in advance of such entry.

(7) Land Eligible for Acquisition.

(a) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entry ways or reclaim surface impacts of opencut mines may be acquired by the department when approved by the Regional Director.

(b) The department, when acquiring land under this rule, shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(i) state law will not allow severance of such interests from the surface estate; or

(ii) such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and

(iii) adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

(c) Procedures for Acquisition.

(i) The department shall obtain an appraisal of the fair market value of all land or interest in land to be acquired from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-Agency Land Acquisition Conference 1973).

(ii) Acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(iii) When acquiring land under this part the board shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq; 41 CFR Part 114-50; Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, I SRM 6.1 et seq; and regulations of the Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for federal public purposes.

(e) Acceptance of Gifts of Land.

(i) The board may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

(ii) Offers to make a gift of such land or interest in land shall be in writing and shall include:

(A) a statement of the interest which is being offered;

(B) a legal description of the land and a description of any improvements on it;

(C) a description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;

(D) a statement that:

(I) the offeror is the record owner of the interest being offered;

(II) the interest offered is free and clear of all encumbrances except as clearly stated in the offer;

(III) there are no adverse claims against the interest offered;

(IV) there are no unredeemed tax deeds outstanding against the interest offered; and

(V) there is no continuing responsibility by the operator under state or federal statutes for reclamation;

(E) an itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(iii) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Montana Opencut Mining Act." Title to donated land shall be in the name of the state of Montana.

(8) Management of Acquired Lands.

(a) Land acquired under this rule may be used pending disposition under subsection (9) of this rule for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.

(b) Any user of land acquired under this rule shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the department for providing the benefit, whichever is appropriate.

(c) All use fees collected shall be deposited in the Fund in accordance with subsection 2 of this rule unless previously appropriated by the legislature for the specific purpose of operating and maintaining improvement of the land.

(9) Disposition of Reclaimed Lands.

(a) Prior to the disposition of any land acquired under this Part, the board shall:

(i) publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4

successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted~~;~~. ~~t~~The notice shall also state that a public hearing will be ~~h~~held if requested by any person;

(ii) hold a public hearing if requested as a result of the public notice, which hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate;

(iii) make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regulations which apply.

(b) The board may transfer, with approval of the Regional Director, the administrative responsibility for land acquired under this rule to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(i) the purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(ii) that the administrative responsibility for the land will revert to the department if, at any time in the future, the land is not used for the purposes specified.

(c) The board with the approval of the Regional Director may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, state, or federal land use plans for the area in which the land is located. Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum:

(A) publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located~~;~~. ~~t~~The notice shall describe the land to be sold, state the ~~a~~appr~~a~~ised value, state any restrictive covenants which will be condition of the sale, and state the time and place of the sale; and

(B) provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(d) All monies received from disposal of land under this subsection shall be deposited in the Fund.

(10) Reclamation on Private Land. Reclamation activities may be carried out on private land if a consent to enter is obtained from the owner.

RULE XXXI APPLICABILITY (1) Effective Dates. Rules XVI and XXI are effective on publication in the Montana Administrative Register. All other rules are effective in accordance with section 19 of Chapter 550, Laws of 1979 on the date the Secretary of Interior conditionally or finally approves Montana's permanent regulatory program under P.L. 95-87. Rules 26-2.10(10)-S10190 through S10350 and 26-2.10(14)-S10360 and S10370 are repealed as of the date the Secretary of Interior conditionally or finally approves Montana's permanent regulatory program under P.L. 95-87.

(2) Compliance. Within 60 days of the effective date of Rule I through XV, XVII through XX, and XXII through XXXI, each operator and test pit prospector shall submit to the department a permit revision application to bring existing permits into compliance with those rules. The department shall make a written finding granting or denying the revision application within 5 months of its submittal. Eight months after the effective date of the rules, no operator may conduct strip or underground mining operations unless the operator's permit has been revised to conform to those rules.

(3) Non-Conforming Structures. (a) No application for a permit or revision which proposes to use an existing structure which does not conform to the design criteria of this subchapter shall be approved without a compliance plan unless the applicant demonstrates and the department finds, in writing, on the basis of information set forth in the application that:

(i) the structure meets the performance standards of this subchapter; and

(ii) no significant harm to the environment or public health or safety will result from use of the structure.

(b) If the department finds that an existing structure does not meet the design and performance standards of this subchapter but that:

(i) modification or reconstruction of the structure will bring it into compliance with the design and performance standards of this subchapter within 6 months of the issuance of the permit;

(ii) the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(iii) the applicant will monitor the structure to determine compliance with the performance standards of this subchapter~~.~~ ~~Then~~ the applicant shall submit and adhere to an approved compliance plan for modification or reconstruction of the structure~~.~~ to comply with this subchapter.

(c) If the department finds that the existing non-conforming structure cannot be reconstructed without causing

significant harm to the environment or public health or safety, the applicant shall abandon the existing structure on a schedule approved by the department.

(4) Rules Applicable to Coal Only. The following rules are applicable only to the strip and underground mining of coal only: Rules XIII, XIV, XV, XXII, XXIII, XXVI, XXVII and those portions of Rule II that apply to these rules. In addition, certain portions of other rules may be applicable to coal mining only if the text of the rule clearly so indicates.

(5) Applicability of Federal Law. Wherever these rules require compliance with both state and federal law or regulations, compliance only with state law is required when, with consent of the federal regulatory agency, state law and rules are being enforced in lieu of federal law and regulations.

COMMENTS AND RESPONSES

The following are summaries of the comments received and the Department's response to those comments:

RULE I DEFINITIONS

(1) COMMENT: Isn't water either acid, alkaline, or neutral? In southeastern Montana alkalinity is a bigger problem than acidity.

RESPONSE: Acid is a serious problem in many mines. This definition specifies the parameters by which drainage is determined acid. The comment is rejected.

(2) COMMENT: Add the definition for "affected area" from 30 CFR 701.5 to clarify Rule XIV(7)(a).

RESPONSE: In order to clarify the meaning of Rule XIV (1)(a), this term "adjacent area" has been substituted and a definition of "affected area" has not been added.

(3) COMMENT: The definition of "agricultural activities" should state "beneficial plant" rather than just "plant."

RESPONSE: Significance and consequently benefit is addressed in Rule XIV. The comment is rejected.

(4) COMMENT: Amend the definitions of "agricultural activities" and "essential hydrologic functions" in sub-sections (6) and (20) by including activities which a

reasonably prudent person would undertake, considering the economics of agriculture and the physical parameters of the land.

RESPONSE: The prudence of an agricultural activity will be considered in the significance determination in Rule XIV(5). While the concern expressed is valid, the department feels that it is adequately addressed. The proposed change is therefore rejected.

(5) COMMENT: The definition of "agricultural use" for all practical purposes, includes all BLM lands and mineral ownership. Should state beneficial plant rather than just plant.

RESPONSE: The intent of this definition is to differentiate agricultural use from other land uses such as residential etc. The comment is rejected.

(6) COMMENT: Amend the definition of "approximate original contour" to allow highwalls to be left when they are in compliance with Rules IV, XII, and XVI.

RESPONSE: Section 82-4-232(1) requires elimination of all highwalls. The comment is therefore rejected.

(7) COMMENT: Amend the definition of "best technology currently available" by eliminating the requirement that state or federal suspended solids requirements not be violated and the express inclusion of sedimentation ponds and adding that the technology must be currently available in the United States and economically feasible.

RESPONSE: Eliminating state or federal suspended solids requirements, and limiting it to that economically feasible or available in the United States is not consistent 82-4-231(3)(k)(ii). The proposed language on other sediment control structures is covered by the language "but not be limited to". The comment is therefore rejected.

(8) COMMENT: Could state agronomic, horticultural, forest and ornamental crops adapted to the soils, climate etc. of the state or area.

RESPONSE: The comment is inconsistent with 30 CFR 701.5 and is therefore rejected.

(9) COMMENT: Add the definition of "disturbed area" from 30 CFR 701.5.

RESPONSE: In order to clarify the meaning of Rule VII(3), the definition has been added.

(10) COMMENT: Subparagraph 3 of definition 28 ("historically used for cropland") is too broad and defeats the purpose of the definition.

RESPONSE: The department agrees, and subparagraph (3) has been deleted.

(11) COMMENT: Sounds like you are shading this to manufacture "prime farmland".

RESPONSE: This comment is inconsistent with 30 CFR 701.5 and is therefore rejected.

(12) COMMENT: Montana's definition of "intermittent stream" does not include the portion of OSM regulation which specifies that a stream which drains a watershed of at least one square mile is an intermittent stream. Consequently, more streams would be designated as ephemeral streams under the Montana definition than under 30 CFR 701.5.

RESPONSE: The department feels that the 1 square mile drainage definition is arbitrary, unrealistic, and without support in fact. The comment is rejected.

(13) COMMENT: Why not word definition (34) to include uranium phosphate, etc, in addition to coal.

RESPONSE: Uranium has been included in this definition. Phosphate is covered under the Open Cut Mining Act and cannot be addressed in these rules.

(14) COMMENT: [Comment #35]---production of agronomic or horticultural crops for harvest---.

What about fish production?

I would estimate that 99.99% of the land area in Montana is used and/or managed for some specific purpose.

RESPONSE: The intent of the comment cannot be ascertained and the comment is therefore rejected.

(15) COMMENT: Definition (35) for cropland is unsuitable because it includes grasses and legumes, hay crops and nursery crops.

RESPONSE: The definition of cropland must be broader than only cereal crops. The department feels that Rule XVI (6)(a) is sufficiently explicit as to cereal crops. The only conflicts that could arise would be in reclaiming a noncereal cropland to a cereal cropland. The wording in Rule XVI(6)(a)(iv) and (v) have been changed to prevent this from occurring. The comment is therefore rejected.

(16) COMMENT: In the definition of "major revision", the term "significant" should be defined.

RESPONSE: The term adequately sets forth a concept which must be applied on a case-by-case basis. The comment is therefore rejected.

(17) COMMENT: Subparts (c) and (d) or (36) (definition of "major revision") should be eliminated to allow minor changes in post mining land uses and bond levels simply.

RESPONSE: In response to another comment, the department has added the requirement that changes in the bonding level must be "significant" before they constitute major revisions. This should satisfy the commentator's concern with regard to bond level. The department rejects the comment with regard to land use because change of postmining land use requires such major changes in the reclamation plan that the permit application procedures should be followed.

(18) COMMENT: Amend the (c)(d) and (e) of the definition of "major revision" by adding "significant" before the word "changes[s]".

RESPONSE: The department feels that adding "significant" to (c) and (e) would not affect the definition. Those changes are therefore rejected. The proposed change to (d) is accepted.

(19) COMMENT: Amend the definition of "material damage" to the quantity or quality of water by adding the word "adverse" before "changes" on the second line, replacing "the composition, diversity, or productivity of vegetation" with "farming which is", and replacing" limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining" with "interrupt, discontinue or preclude farming on such alluvial valley floor".

RESPONSE: The "adverse changes" language is covered in Rule XIV(6)(a). The two phrases in question are necessary to clarify the statutory requirements. The proposed modification is therefore rejected.

(20) COMMENT: Definition (42) should also include the Federal as well as state list.

RESPONSE: The state or countylist is specific to the locality and therefore preferred. The comment is therefore rejected.

(21) COMMENT: A definition of "operation" consistent with 30 U.S.C 1291(28) should be added.

RESPONSE: The term is defined in 82-4-203(19). The department cannot change this definition by rule to comply with 1291(28). However, SB 515 changed the definitions of "area of land affected" and "operation" to allow the department to regulate the same areas and activities as are covered in 1291(28). The comment is therefore rejected.

(22) COMMENT: Definition (47) could be construed to be anyone in the state and perhaps even the U.S.

RESPONSE: The comment is inconsistent with the intent of the definition and is therefore rejected.

(23) COMMENT: Amend the definition of "ramp roads" to be roads "within the immediate mine pit area".

RESPONSE: The proposed change would be confusing, and would apply ramp road criteria to additional roads. The proposed change is therefore rejected.

(24) COMMENT: In Def. 61 , isn't wildlife and recreation a renewable resource?

RESPONSE: The comment is inconsistent with the intent of the definition and 30 CFR 701.5 and is therefore rejected.

(25) COMMENT: Amend the definition of "sediment" to include only particles greater in size than .45 u.

RESPONSE: The department agrees that this change will be consistent with EPA rules and the change will be incorporated.

(26) COMMENT: Montana Rule I does not include reclamation activities in the definition of "strip mining and underground mining." This rule contains the phrase "strip and underground mining activities" instead of the phrase "surface mining and reclamation activities" as used in 30 CFR 701.5. We consider that these two definitions are not interchangeable.

RESPONSE: In the Montana definitional scheme, strip and underground mining operations includes reclamation activities. Thus, wherever in the text of the rules the term "strip or underground mining activities" is used, the term "strip or underground mining operations" has been substituted.

(27) COMMENT: Modify the definition of sub-irrigation by striking (a) through (e).

RESPONSE: The intent of this definition was to concisely define the conditions considered to be characteristic of sub-irrigation. The proposed changes would not accomplish this goal. The comment is therefore rejected.

(28) COMMENT: Modify the definition of "unconsolidated streamlaid deposits holding streams" by replacing the word "other" in the fourth line with "intermittent".

RESPONSE: If an ephemeral stream meets all of the criteria for an alluvial valley floor, it must by statute be considered as such. The comment is therefore rejected.

(29) COMMENT: Modify the definition of "undeveloped rangeland" by including a provision that such land may not be improved land.

RESPONSE: Adding the word "improved" overrestricts the definition of "undeveloped rangeland". The proposed change is therefore rejected.

RULE II STRIP MINE APPLICATION REQUIREMENTS

(1) COMMENT: Modify (1)(c) to clarify that sample analysis will be done at the department's expense.

RESPONSE: The rule has been modified grammatically and to require the operator only to collect samples and not to analyze them. Any analyses must therefore be done at the department's expense.

(2) COMMENT: Permit applications should be verified (see 30 CFR 771.27). OSM understands that this is required on their permit application form.

RESPONSE: Application verification is indeed included on the permit application form which is required to be a part of the application by (1)(e).

(3) COMMENT: Delete the requirement contained in (2)(e).

RESPONSE: Because (2)(e) is duplicative of (2)(o), (2)(e) has been eliminated.

(4) COMMENT: In (2)(f), change the word "application" to "permit".

RESPONSE: Comment accepted. The change has been made.

(5) COMMENT: Modify (2)(h)(i) by limiting permit histories to Montana permits.

RESPONSE: The requirement is mandated by 30 CFR 778.4 (d) and is useful in implement 82-4-227(11). The comment is rejected.

(6) COMMENT: The cross reference in paragraph (2)(i) is unclear.

RESPONSE: The cross reference has been corrected to be (f)(iii) rather than (a)(a)(iii).

(7) COMMENT: Delete the requirement contained in (2)(i) because the information required therein must be provided in (2)(1).

RESPONSE: To the extent that (2)(1) requires information on coal operations, it is duplicative of (2)(1). Paragraph (2)(1) has therefore been amended to apply to only uranium and coal prospecting permits. This information is necessary to implement 82-4-251(4).

(8) COMMENT: Modify (2)(m) to require information on permit forfeiture or bond revocation for only the past five years.

RESPONSE: Section 82-4-222(g), which (2)(m) implements, does not authorize the department to place such a limitation on the informational requirements.

(9) COMMENT: Modify (2)(n) to require information to implement section 82-4-227(1).

RESPONSE: Section 82-4-222(n) authorizes the department to require information it deems appropriate. Paragraph (2)(n) is identical to 30 CFR 778.14(c). That rule sets forth informational requirements for state programs pursuant to P.L. 95-87. The proposed amendment is therefore rejected.

(10) COMMENT: In (2)(n), disclosure of violations should be limited to those laws or regulations pertaining to reclamation, air, water, and other matters of environmental protection and not safety.

RESPONSE: The department has no authority in the area of mine safety. The comment is accepted and appropriate language has been added.

(11) COMMENT: In (3)(l)(iii), use of the terms, "fawning, brooding, and nesting areas" is improper because the deer do not fawn in traditional geographic locations and brooding and nesting areas likewise are not specific to a geographic point.

RESPONSE: Deer, antelope, and certain birds typically fawn in a particular habitat type which on a given mine are in relatively specific areas. The comment is therefore rejected.

(12) COMMENT: The dates in (2)(x)(ii) and (iii) should be changed from "May 3, 1977" to "May 3, 1978".

RESPONSE: These typographical errors have been corrected in accordance with the comment.

(13) COMMENT: Montana's Rule II(3)(b) does not contain explicit reference to the National Register of Historic Places as does 30 CFR 761.11 (c).

RESPONSE: The paragraph is not limited to the National Register of Historic Places. In all cases any sites eligible for or included in the register are required to be identified, but in addition all other archaeological, historical, ethnological and cultural values must be identified.

(14) COMMENT: Montana's Rule II(3)(b) contains the phrase "the area to be affected" and not the phrase "the

proposed mine plan and adjacent area" as in 30 CFR 779.12. Montana's wording does not cover the buffer zone.

RESPONSE: The terms are probably synonymous because this information is being used to implement 82-4-227(2). However, for clarification the federal language has been adopted.

(15) COMMENT: Coordination with requirements under other federal laws (see 30 CFR 770.12) should be addressed in the state submission.

RESPONSE: No rule is required. The state permanent program submission will address this issue.

(16) COMMENT: Information required on surface water in 30 CFR 779.16(a) is not contained in the Rule.

RESPONSE: The department agrees. The language has been added.

(17) COMMENT: Modify (3)(e) to require information on "alternate" rather than "potential" water supplies.

RESPONSE: Potential in the context of this rule is not the same as alternate. The rule is to describe the impact to potentially developable water supplies. "Alternate" in the context of other rules is a water supply that could be developed if the developed or potentially developable water supplies were degraded or destroyed. The proposed change is therefore rejected.

(18) COMMENT: Add to (3)(e)(i) "unless a hydrologic boundary justifies shorter distances".

RESPONSE: The department agrees that this change will eliminate unnecessary work and has incorporated the proposed change.

(19) COMMENT: Eliminate from (3)(f) the requirement that data be generated by departmentally certified laboratories using departmentally approved methods because no authority, need, or procedures therefore exist.

RESPONSE: Authority for this provision is in 82-4-205 (1) and (7). However, the portion requiring the laboratory to be certified by the department has been deleted. The requirement relating to departmentally approved methods has not been deleted.

(20) COMMENT: Add language to (3)(g) which exempts from the requirement analysis of chemical and physical (except toxic mineral or elemental) properties.

RESPONSE: The data is necessary to determine the impacts of mining and constitutionally the data cannot be kept confidential. The comment is therefore rejected. Rule XXVI(5) (d) has also been amended to conform.

(21) COMMENT: Information required on surface water in 30 CFR 779.16(a) is not contained in the Rule.

RESPONSE: This information is included in (3)(h). Paragraph (3)(h)(ii) contains a typographical error and has been corrected to read "location of all surface water bodies such as streams, lakes, ponds, and springs".

(22) COMMENT: Eliminate (3)(k)(iii), which requires a rangesite map.

RESPONSE: The rangesite map is required to satisfy 30 CFR 779.21(4) of the federal rules. The proposed change is therefore rejected.

(23) COMMENT: Modify (3)(l)(v) to require aerial observations for 1 mile around the permit area.

RESPONSE: The department agrees that not all portions of the wildlife survey should be included for the 2 mile area around the proposed mine area. However, the department feels that 1 mile is not sufficient for many animals. Rule II has been modified to waive the 2 miles for animals with small home ranges and to make allowances when access is denied.

(24) COMMENT: Subparagraph (3)(m)(i) concerning soil analysis for determining depth of suitable topsoil material.

What are the limits of each specific parameter listed?

What about analyzing soil properties such as, toxic materials, available water capacity, coarse fragments, and erosion hazards?

RESPONSE: The department works within ranges for each parameter studied and the weight given these depend on the soil type, the volume of that type on the area to be mined, and interactions between various paramaters. Most toxic

elements other than undesirable pH, EC saturation percentage, SAR, Boron or texture done in the topsoil analysis would surface from overburden sampling and analysis. Saturation percentage is a required analysis under the department's guidelines as is particle size distribution and textural class. Coarse fragments and erosion hazards are included as part of the series descriptions or are interpreted from those descriptions.

(25) COMMENTS: Rule II should contain the information as required in 30 CFR 779.22(b).

RESPONSE: Paragraph (3)(n)(ii)(c)(V) has been rewritten to read the same as 30 CFR 779.22(b)(5). Also (3)(n)(ii)(c)(VI) has been changed to (3)(n)(ii)(D).

(26) COMMENTS: The general requirements for hydrologic and geologic information should apply to the mine plan area. Compare Rule II(3)(q) to 30 CFR 779.13(a).

RESPONSE: Part of the paragraph was omitted. The paragraph has been corrected to read ". . .all lands within the permit area and the adjacent and general areas. . .".

(27) COMMENT: Information on geology as specified in 30 CFR 779.14 should be required.

RESPONSE: The information required by 30 CFR 779.14 is found in (3)(e), (g), and (q).

(28) COMMENT: Hydrologic data requirements of paragraph (3)(q) for the "general area" are virtually without limit. The general area should be limited in the downstream direction to that point above which the mine permit area comprises 10% of the total watershed area. Below this point significant impacts are highly unlikely. Also, data requirements should be limited to that information which is necessary to reasonably assess the hydrologic impact of mining in the proposed permit area.

RESPONSE: Hydrologic data for the "general area" is required for state programs in 30 CFR 779.13(a). This portion of the comment is therefore rejected. The department agrees that the only hydrologic data that should or can be required is that necessary to reasonably assess the impact of mining and language to this effect has been added.

(29) COMMENT: Rule II (4)(a)(ii) should contain reference to 780.11(b)(6).

RESPONSE: The information required by 780.11(b)(6) has been added to the requirements of (4)(a)(ii).

(30) COMMENT: Subsection (7) of Rule II does not include the provisions of 30 CFR 785.20(c).

RESPONSE: The requirements of 785.20(c) are addressed in Rule XVII(3).

(31) COMMENT: The requirements of paragraph (4)(6) relating to existing structures do not recognize existing structures which do not meet specific design requirements, but are in compliance with applicable performance standards.

RESPONSE: The department agrees. The rule has been amended to require a compliance plan for only those structures proposed to be modified.

(32) COMMENT: The purpose of the proposed rules is to bring the department's program into compliance with P.L. 95-87. Paragraphs (4)(a)(i)(A), (B), and (C) go beyond this purpose. This information is beyond the authority of the state to require.

RESPONSE: As stated in the notice of intent to adopt the proposed rules, the purpose of adoption is broader then compliance with the federal act. The information is necessary to determine if the post-mining contours indicated by the applicant are attainable. Authority is 82-4-222(1)(n).

(33) COMMENT: Section (4)(e)(i)(A) is unclear as to enhancement of wildlife values off the permit area.

RESPONSE: The rule does not contemplate activities off the permit area. The comment is rejected.

(34) COMMENT: Add to (4)(f)(x) language indicating that the applicant can satisfy the requirement by presenting copies of valid permits.

RESPONSE: This change will satisfy the requirement and has been incorporated.

(35) COMMENT: Rule II(4)(g)(ii)(A). A plan for control of surface and groundwater drainage into the proposed mine

plan area. It is unclear as to whether this means a plan for control of groundwater drainage into the mining area or the pit itself.

RESPONSE: At whatever point groundwater can become a problem (i.e. generally the mine pit) relative to the entire mine plan area and the mining operation, a plan should be shown for the control of that water. Cut off trenches in advance of the mine pit may be the appropriate methodology to control groundwater that would otherwise cause problems in the pit. The language has been retained as it covers all problems with necessary flexibility.

(36) COMMENT: Add to (4)(o)(ii)(A)(I) language providing that the chemical and physical properties of the coal, except its potentially toxic mineral or elemental contents, shall be kept confidential and not part of the public record.

RESPONSE: The information is necessary to assure coal conservation. Constitutionally (Article II section 9) the department may not keep the information confidential. The proposed change is therefore rejected.

(37) COMMENT: Delete (4)(o)(iii) because the information on equipment is not germain, because excavation and mineral movement information is required elsewhere, and because cost and yield information is confidential trade secrets and beyond the department's statutory authority.

RESPONSES: The information is required to assess the capabilities of the equipment and to ensure coal conservation. This information required is from the Coal Conservation Act rules. The statutory authority is 82-4-223(10). The proposed change is therefore rejected.

(38) COMMENT: Delete (4)(p) because the grazing plan is not germain to review of mining plan.

RESPONSES: This subsection is required by 30 CFR 780.23 (2). The proposed change is therefore rejected.

(39) COMMENT: Rule II(6). It should be made clear what the term "adjacent to" means in an alluvial valley floor situation. In some situations it is obvious both geologically and hydrologically that a proposed mining disturbance will have no impact on the nearby alluvial valley floor. If it can be shown from existing information

that there would be no impact, then the requirement for an investigation of the potential alluvial valley should be suspended.

RESPONSE: This sort of flexibility is contained under the statement contained in (6)(b)(i): "Studies performed during the investigation by the applicant or subsequent studies as required of the applicant by the department shall include an appropriate combination adopted to site specific conditions. . ." It is not necessary to add any language since the flexibility is already contained in the regulations.

(40) COMMENT: In the alluvial valley floor question, the department should be required to respond within a specific time frame. The determination of an alluvial valley floor must be made prior to application for a mining permit. If there is no designated maximum DSL review time, there could be significant delays for the applicant.

RESPONSE: The department attempts to respond to all work requests in a timely fashion. However, determination of an alluvial valley floor does not have to be made before an application for a permit is submitted. The comment is rejected.

(41) COMMENT: Section (6)(c)(ii)(C). What are the "other geomorphic studies" that are required in this section?

RESPONSE: Other geomorphic studies may include an evaluation of geomorphic characteristics of the area that would indicate the proper post mine topography design for uranium stability.

(42) COMMENT: Section (6)(c)(ii)(F). The assessment of the impacts on ranches is complicated by broken ownership units, management of separate ranch units as individaul entities under one large ranch and the possible existence of 5, 10 or 20 acre parcels that could be considered ranches. What is specifically required for economic analysis and what is its objective?

RESPONSE: The department does not feel this question should be handled by rule, but rather enough flexibility should be retained to address it on a site specific basis consistent with intent of the Act.

(43) COMMENT: Rule II(6)(b)(i)(D). Sub-irrigation. It is not clear what water quality has to do with sub-

irriqation. Sub-irrigation is a hydraulic phenomenon which would be independent on the quality of the water.

RESPONSE: In order for sub-irrigation to be an essential hydrologic function, the water must be of suitable quality to benefit vegetation. The comment is rejected.

(44) COMMENT: Rule II(6)(b)(i)(E). What soil measurements are required? Does this mean soil types and characteristics?

RESPONSES: Rules are not appropriate to detail the specific tests as they may change depending on site specific concerns, technology etc. The comment is rejected.

(45) COMMENT: Rule II(6)(C(iii)(A)(III). What does "or lie between the aquifer and the stream" mean?

RESPONSE: Rule II(6)(C)(iii)(A)(III) has been changed to read "(6)(c)(iii)(A)(III)". Also, "associated with the stream or lie between the aquifer and the stream" has been replaced with "hydraulicly connected to the stream or the unsaturated valley fill below the stream and above the alluvial aquifer."

(46) COMMENT: Rule II(6)(c)(iii)(B)(I). Surface roughness is more a regulatory function rather than a storage function. It is not clear why surface roughness is in the surface water requirements.

RESPONSE: The department agrees that surface roughness is inconsistent with this paragraph. Surface roughness has been removed from (6)(c)(iii)(B)(I).

(47) COMMENT: Rule II(6)(c)(iii)(B)(II). The statement "and other water-bearing zones found beneath the stream." This should be restricted to the unconsolidated materials that form the aquifer beneath the stream. As the rule is written, it is not clear as to how deep beneath the steam water-bearing zones should be evaluated.

RESPONSE: The context of (6)(c)(iii)(B)(II) is explained in (6)(c)(iii) "characteristics which support the essential hydrologic functions and which must be evaluated in a complete application include. . .(6)(c)(iii)(B) characteristics supporting the function of storing water which include. . .(6)(c)(iii)(B)(II). . .other water bearing zones found beneath the valley floor. . ." Therefore water bearing

zones only need to be evaluated to a depth which help support the essential hydrologic function of the valley floor.

(48) COMMENT: Subsection (8) of Rule II does not include the provisions of 30 CFR 785.21(c).

RESPONSE: Thirty CFR 785.21(c) requires that the department, before issuance of a permit for a coal processing facility, must make a special finding that the special rule applicable to coal processing facilities will be complied with. The department has chosen to cover coal processing facilities as other mine related disturbances and no special rule for them has been adopted. Therefore the general requirement for written finding contained in Rule III(2)(f) is applicable.

(49) COMMENT: Add a new subsection (9) which allows a permit applicant from whom information not expressly required in Rule II is required to have an informal hearing before the Board in which the burden is on the department to show the relevancy, usefulness, and necessity of the information.

RESPONSE: Section 82-4-222(1)(l) provides that the department may require further information. It is implied that the information must be relevant, useful, and necessary. The statute does not provide for a formal or informal hearing. The comment is therefore rejected.

(50) COMMENT: The rule's requirements for the operation are excessive and place a considerable burden in time and money on the operator.

RESPONSE: This rule contains many informational requirements for permanent state programs from 30 CFR, Parts 770, 771, 778, 779, 780, 782, 783, 784, and 785 and other informational requirements the department deems necessary. The department, in drafting this rule, attempted to eliminate any requirements that are unnecessary and not federally required.

RULE III APPLICATION REVIEW PROCESS

(1) COMMENT: Modify (1)(a)(iii)(A) to provide for confidentiality of coal characteristic information.

RESPONSE: Constitutionally (Article II section 9) the department may not keep application material confidential. The proposed change is therefore rejected.

(2) COMMENT: Section (1)(c)(ii)(B) of Rule III does not specifically state where written objections are to be filed, as required in 30 CFR 786.13(b)(2).

RESPONSE: The department agrees. Language has been added to indicate that copies of the objections will be available at both the Helena and Billings offices.

(3) COMMENT: There is no provision in the Rule for public inspection of permit application, as specified in 30 CFR 786.15.

RESPONSE: Article II, section 9 of the Montana Constitution guarantees this right to inspect. No rule is necessary.

(4) COMMENT: This rule should include a provision for proof that all reclamation fees have been paid, as specified in 30 CFR 786.19(h).

RESPONSE: The department does not have authority to enforce the reclamation fees requirements of federal law. No change has been made.

(5) COMMENT: There is no provision to insure that coal mining and reclamation operations will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area, as specified in 30 CFR 786.19(j).

RESPONSE: The department agrees that this federal requirement should be included and language has been added.

(6) COMMENT: There is no provision in the Rule regarding the permit conditions specified in 30 CFR 786.29.

RESPONSE: The department is of the opinion that these conditions are unnecessary because they are required by other provisions of the law and rules or may be required by departmental order.

(7) COMMENT: Subsection (1)(e)(iii). This subsection allows the department to issue a permit if an applicant is contesting, either administratively or judicially, a violation as per 82-4-227(11). However, the statue provides only for permits to be issued if violations are being corrected, not appealed. The department's proposed rule should be changed to conform with 82-4-227(11).

RESPONSE: The proposed rule is taken from 30 CFR 786.17 (c)(2). Section 82-4-227(11) provides that the department may not issue a permit to one who is currently in violation. Until there is a final determination of administrative or judicial appeals on the validity of the violation changed, the department does not have positive information that there has been a violation sufficient to warrant withholding of a permit. To eliminate this provision would in practice eliminate many large operations' ability to appeal violations and in essence deny them due process. The comment is therefore rejected.

(8) COMMENT: Modify (1)(e)(iii) by adding the following language: "unless the applicant is on a compliance schedule agreed upon between the department and the applicant to correct such violation".

RESPONSE: If an applicant is on a compliance schedule, then section 82 4-227(11) does not prohibit permit issuance. The proposed modification is therefore rejected.

(9) COMMENT: The notice and hearing procedures are too expensive for exploration activities.

RESPONSE: The comprehensive notice and hearings requirements apply only to prospecting conducted by means of test pit. Application to test pits is required for state programs in 30 CFR 776.14.

(10) COMMENT: The first sentence of (1)(d)(ii)(D) should be struck because the contested case provisions of the APA now provide for informal conferences.

RESPONSE: The department agrees. The language has been deleted.

RULE IV MINING, BACKFILLING & GRADING

(1) COMMENT: Modify (1)(d) to allow some highwalls to remain in limited situations.

RESPONSE: Section 82-4-232(1) requires elimination of all highwalls. The proposed modification is therefore rejected.

(2) COMMENT: Change the (1)(e)(iii) 20% outslope requirements to a 50% grade.

RESPONSE: Slopes greater than 1:5 have not been allowed other than on reduced highwalls, as they are highly erosive. The proposed change is therefore rejected.

(3) COMMENT: Modify (1)(h) to provide a 4 foot rather then 8 foot burial requirement for acid-forming, toxic-forming, combustible, and other waste materials.

RESPONSE: Recent information has shown that plants on old (50 years +) spoils often root to depths of over 6 feet (Pers. Com. Bill Schaefer MAES). The department feels that the eight foot burial is necessary to ensure adequate revegetation. The proposed change is therefore rejected.

(4) COMMENT: Add to subsection (1) a new paragraph comparable to the thin overburden provisions contained in 30 CFR 816.104.

RESPONSE: Such a thin overburden provision would conflict with the 82-4-232(1) requirement that the area of land affected be restored to approximate original contour. The proposed change is therefore rejected.

(5) COMMENT: Amend (1)(o)(i) to provide that backfilling and grading must not be more than 4 spoil ridges behind the pit.

RESPONSE: The proposed change is not in keeping with contemporaneous reclamation nor rapidly returning the land to production. The proposed change is therefore rejected.

(6) COMMENT: Delete from (1)(o)(i) the requirement that the operator demonstration of the necessity for additional time be in the form of "a detailed written analysis".

RESPONSE: Written analyses present the requests for additional time in a format readily available to the public. The proposed change is therefore rejected.

(7) COMMENT: Add to (7)(m) the clause "unless authorized by the department" to give the department authority to allow head-of-hollow fills. In addition, head-of-hollow fill may not be different from replacement of spoils from above a pedastalled coal seam.

RESPONSE: Head-of-hollow fills and valley fills are not consistent with approximate original contour and are inconsistent with Montana law. The comment is rejected.

(8) COMMENT: Montana Rule IV does not contain the provisions of 30 CFR 816.106. Although this is covered in Rule IX, section (12), it appears to be discretionary, not mandatory, since "may" is substituted for "shall".

RESPONSE: The department agrees that the federal rule requires mandatory language. The "may" has been changed to "shall".

RULE V ROADS AND RAIL LOOPS

(1) COMMENT: Change paragraph (1)(a) to read as follows: Haulageway roads. . .of immediately adjacent spoil will ~~result in better reclamation~~ not degrade the quality of subsequent reclamation.

RESPONSE: The comment is inconsistent with 82-4-234(1) and the proposed change is therefore rejected.

(2) COMMENT: Delete the following words in subsection (b): ". . .to prevent contamination of topsoil by road or embankment materials, ~~by dust~~, or by cleaning operations."

RESPONSE: The productivity of topsoil must be maintained and any contamination avoided. The comment is therefore rejected.

(3) COMMENT: Change paragraph (1)(b)(ii)(F) to read: Cut slopes shall not be more than ~~1v:2h (26.6°)~~ 1v:1.5h in soils or ~~1v:1/2h (63.4°)~~ 1v:0.25h in rock.

RESPONSE: The department agrees that these changes would result in less surface disturbance and they have been incorporated.

(4) COMMENT: Change (1)(d) to read as follows: "No roads or railroad loops shall be built with or surfaced with refuse coal, acid-producing or toxic materials. ~~or with any material which will produce a concentration of suspended solids in surface drainage.~~"

RESPONSE: The department agrees that this language is unnecessary as it is covered in (1)(c). The change has been incorporated.

(5) COMMENT: The requirements of paragraph (3)(f) are excessively expensive and not in the public interest.

RESPONSE: By using the phrase "as necessary", the department has maintained the flexability to waive the requirements of this paragraph if the operator can document they are not needed. The comment is therefore rejected.

(6) COMMENT: Paragraph (3)(g) is not necessary with the currently recognized standards for achieving acceptable moisture content at the embankment.

RESPONSE: This comment is inconsistent with 816.152(6) and is therefore rejected.

(7) COMMENT: It is impossible for water to flow through a culvert without a head of water as required in (5)(c)(i).

RESPONSE: The paragraph was written incorrectly. It has been rewritten to state that the culvert will not impound water.

(8) COMMENT: The requirement in (5)(c)(i) of designing a culvert of greater than 35 square feet for a 100 year 24 hour precipitation event goes beyond the federal regulations.

RESPONSE: The department agrees, and the rules have been changed to reflect federal requirements.

RULE VI USE OF EXPLOSIVES

(1) COMMENT: Modify the (3)(a)(i) requirement that the blasting schedule be published once a week for 4 consecutive weeks to require one publication only.

RESPONSE: Publication for 4 weeks conflicts with the requirement that publication be not more than 20 days before initiation of the blasting program. The department agrees that one publication would provide adequate notice. The proposed modification has therefore been made.

(2) COMMENT: Change the requirement in (3)(a)(ii) for distribution of the blasting schedule by requiring that it be distributed to persons living within 1/2 mile rather than 1 mile.

RESPONSE: The department feels that it is necessary to alert residents within 1 mile to blasting to allow them to make any adjustments necessary. The 1 mile requirement has been part of Montana's program since its inception. The proposed change is therefore rejected.

(3) COMMENT: Add to (3)(c)(i) the following language: "Except where a schedule has previously been provided to the owner or residents under paragraph (2)(a) of this rule with advice on requesting a pre-blast survey, the notice of change need not include information regarding pre-blast survey".

RESPONSE: The proposed addition would decrease expense to the operator without inhibiting public notice. The proposed language has therefore been added.

(4) COMMENT: Add wording which prohibits flyrock outside the permit area.

RESPONSE: The department agrees that this prohibition is needed to implement 82-4-231. The appropriate language has been added to (4)(d).

(5) COMMENT: Amend (4)(c) to require warning and all clear signals audible 1/2 mile rather than 1 mile.

RESPONSE: The 1/2 mile requirement would decrease the expense to the operator. Because bodily harm is not a factor over 1/2 mile, public safety would not be jeopardized. The amendment has therefore been made.

RULE VII HYDROLOGY

(1) COMMENT: Rule VII-Hydrology. (1)(c). This is a duplication of the water pollution laws of the Montana Department of Health and Environmental Sciences and is not needed in the strip mining rule.

RESPONSE: The department agrees that is it unnecessary to reiterate water pollution laws administered by the D.H.E.S. The paragraph has been deleted.

(2) COMMENT: Paragraph (1)(c) is retained from the old rule and permits "high quality waters" to be degraded by strip mining activities if "it is affirmatively demonstrated to the board through public hearing, that such change is justifiable as a result of necessary economic or social development and that the change will not adversely affect the present and future uses of such waters". It seems that this is contrary to the spirit of federal requirements with respect to water quality degradation from strip mining, and other water pollution control laws. The language should be stricken from the rule.

RESPONSE: The paragraph is duplication of a water pollution law administered by the Department of Health and Environmental Sciences. The paragraph has been deleted for the reasons in the response to the comment immediately above.

(3) COMMENT: Exploration holes in which the cuttings were raked into the hole and seeded have shown good stable revegetation rates. The requirement of subsection (2) to fill the holes with bentonite is expensive and unnecessary.

RESPONSE: The department's concern in preventing the mixing of groundwaters. The department feels that only by filling the entire column with bentonite can protection of groundwaters be insured. The comment is therefore rejected. Exploration hole plugging requirements have been moved to Rule XIX.

(4) COMMENT: Cutting the casing off two feet below the surface as required by (2)(b) is impractical and unnecessary.

RESPONSE: The language in question has been moved to Rule XIX. Rule XIX has been changed to require the casing be cut off two feet below only in cultivated areas where it is necessary to allow cultivation of the area.

(5) COMMENT: (2)(b)(iii). The term "seismic plug" should be defined or the word "seismic" should be deleted. Unless the holes contain water there is no reason to backfill with anything other than cuttings. Utilization of cement or bentonite would be a substantial additional cost and would provide no environmental benefit.

RESPONSE: The word "seismic" has been removed from Rule XIX(6). The enforcement of drill hole abandonment procedures would be impossible if the driller could merely state that a hole was dry. Situations could also occur where aquifers with low hydraulic conductivities could be interpreted to be "dry", especially when drilling with fluids. Similarly wall cake on the sides of the exploration hole would prevent the migration of ground water into the hole and make it appear "dry". The department is of the opinion that the potential environmental harm by creating a loophole in the regulation outweighs the savings that would be experienced by the few dry holes that are drilled. The comment is rejected.

(6) COMMENT: In Rule VII(2) there is cross-reference to prospecting performance standards of Rule XIX(6) and (10). However, there is no Rule XIX(10).

RESPONSE: This cross-referencing error has been corrected.

(7) COMMENT: Montana Rule VII(3)(a) allows "treatment facilities" to be substituted for sedimentation ponds, which does not conform to 30 CFR 816.42 but does parallel 30 CFR 817.42, which allows for treatment facilities. We believe that sedimentation ponds are required.

RESPONSE: The department agrees. Paragraph (3)(a) has been changed to conform to 30 CFR 817.42.

(8) COMMENT: Rule VII(3)(b) does not contain the requirement in 30 CFR 817.42(c) that in addition to sedimentation ponds, "treatment facilities" shall be maintained until the disturbed area has been restored. The words "and treatment facilities" should follow "sediment ponds" in section (3)(b). Also, in (3)(c)(ii), delete "this" and insert "(f) below".

RESPONSE: Paragraph (3)(b) has been changed to conform to 817.42(c) to comply with the federal rules. "This" has been deleted from (3)(c)(ii) and "(f)" added to correct the cross-referencing error.

(9) COMMENT: The effluent limitations for total suspended solids in section (3)(i) should allow for more strict limitations on a case-by-case basis as required in 30 CFR 816.42(a)(7).

RESPONSE: Subsection (3)(f)(i) requires the applicant to comply with "all state and federal laws and regulations". The basis for footnote (4) in 816.42(a)(7) is the more stringent NPDES requirements in these Western States (source: preamble to the permanent rules, page 15154.) In Montana, the Department of Health and Environmental Sciences issues the NPDES permits. Since all operators with discharges must have a NPDES permit, and the operator must be in compliance with state law, the department chose to adopt the maximum standards.

(10) COMMENT: Paragraph (3)(f)(i) should be rewritten to allow the incorporation of new technology and information into pond design.

RESPONSE: This comment is inconsistent with 30 CFR 817.42 (a)(7), which is a federal permanent program requirement. The comment is therefore rejected.

(11) COMMENT: Paragraph (3)(g) should be amended to provide that discharges are not subject to effluent limitations if either (i) or (ii) of (3)(g) are met.

RESPONSE: This rule is required by 30 CFR 816.42(6). The proposed amendment is therefore rejected.

(12) COMMENT: Paragraph (4)(a)(ii). It is not clear what is required by this section and the section assumes there is a pre-mining dynamic equilibrium between the stream and the watershed.

RESPONSE: Paragraph (4)(a)(ii) requires that drainages be restored to a state where they can degrade and agrade as flow events that are imposed on the channel dictate (i.e. not be constrained by structural controls) and to be restored to the dynamic equilibrium conditions that would allow the stream reach to function in harmony with the rest of the drainage systems. Dynamic equilibria is a well established concept in the geomorphic literature. The comment is therefore rejected.

(13) COMMENT: Make the following changes in (4)(a): (4) Reclamation of Drainages. (a) General Requirements. Drainage design. . .be reclaimed. The average. . .with an ~~concaved~~- approved longitudinal profile and the channel and floodplain shall be designed and constructed to: (i) establish ~~or restore~~ the channel to ~~its natural~~ a meandering pattern with an ~~geomorphically~~ acceptable gradient as ~~determined~~-approved by the department. . . (iv) ~~provide separation of flow between adjacent drainages and~~ safely pass the runoff from a 24-hour precipitation event with a 100-year recurrence interval, or larger event as specified by the department;

RESPONSE: The department feels that the language of the proposed rule is necessary in most cases to insure stable drainage design, and that needed flexibility is found in (4) (b). The proposed change is therefore rejected except that the flexibility to deviate from the concave longitudinal profile requirement has been added.

(14) COMMENT: Unstable conditions referenced in (4)(a)(iii) should be defined. Small streams in eastern Montana

are inherently unstable. The paragraph requires stabalizing areas outside the permit area.

RESPONSE: "Unstable conditions" was left purposefully broad to encompass any problem that might arise. The department recognizes that the streams are dynamic, as evidenced by (4)(a)(ii). As far as construction type disturbances, these rules can only apply to the permit area. However an operator would not be allowed to create a stream channel which would create or increase unstable conditions off the permit area.

(15) COMMENT: Eliminate the last sentence of (4)(b) because it is redundant.

RESPONSE: The last sentence provides that no alternate technique may be used unless it is as environmentally protective as (i) and (iii). This requirement is not contained anywhere else. The proposed deletion is therefore rejected. Language has been added which clarifies the language of the rule to indicate that only alternatives to (i) and (iii) and the concave longitudinal profile requirement may be proposed.

(16) COMMENT: Amend (5)(a)(iii) as follows: Permanent diversions shall not be constructed to pass large flow events into an adjacent drainage channel unless approved by the department. ~~that would result in excessive erosion in the natural channel~~. Water in excess of the design event shall be conveyed ~~over a stable spillway and allowed to flow~~ to a collection point where the water can be pumped into a treatment facility and treated in order to meet effluent limitations.

RESPONSE: The Strip and Underground Mine Reclamation Act attempts to limit off-site disturbance to the hydrologic balance; therefore, the rule is appropriate when it limits diversions that would cause excessive erosion off-site.

As a point of clarification the last sentence has been changed to read, "water in excess of the design event shall be conveyed in a stable manner to an appropriate treatment facility before passing off the permitted area.

(17) COMMENT: The phrase "Ephemeral or intermittent streams larger than one (1) square mile. . ." in (5)(b)(ii) is without meaning.

RESPONSE: The correct wording ". . .streams with drainage area larger than (1) square mile. . ." has been substituted.

(18) COMMENT: Transfer (5)(b)(ii)(A)(I) to (5)(c) because it deals with reclamation of drainage channels.

RESPONSE: Under reclamtion of stream channels ((5)(c)), structural erosion controls are not allowed. In (5)(b)(ii)(A)(I) structural controls are allowed when approved by the department since the diversion is only temporary. The comment is therefore rejected.

(19) COMMENT: Section (5)(b)(ii)(A)(I) does not include the phrase "only where they are stable and will require infrequent maintenance" in 30 CFR 816.44(b)(1) and replaces it with "only when approved by the department as being necessary to control erosion."

RESPONSE: Paragraph (5)(b)(ii)(A)(I) applies only to temporary diversions. The section of 816.44(b)(1) applies to permanent diversions. The comment is therefore rejected.

(20) COMMENT: Amend (5)(b)(i) by eliminating the reference in the first line to shallow groundwater flow.

RESPONSE: The proposed change is inconsistent with 30 CFR 816.43 and is therefore rejected.

(21) COMMENT: Eliminate from (5)(b)(ii)(A)(II) the requirement that the channel must be at least equal in capacity to the unmodified stream channel immediately upstream and downstream because of temporary nature of diversion.

RESPONSE: The comment is inconsistent with 30 CFR 816.44(b)(2).

(22) COMMENT: Amend (5)(b)(ii)(B) by replacing "no longer needed to achieve the purpose for which they were authorized" with "when requested by the permittee".

RESPONSE: The proposed change is inconsistent with 30 CFR 816.43(e) and is therefore rejected.

(23) COMMENT: Amend (7)(f) by replacing "not relieve the person from compliance with applicable effluent limitations" with "be deemed to constitute the use of the best technology currently available and for purposes of these rules, compliance herewith."

RESPONSE: The proposed change is inconsistent with 30 CFR 816.46(f) and is therefore rejected.

(24) COMMENT: Delete from (7)(h) "60 percent of" and "40 percent of"

RESPONSE: The proposed change is inconsistent with 30 CFR 816.46(h) and is therefore rejected.

(25) COMMENT: Section (7)(c) calls for spillways (principal and emergency) from sedimentation ponds to be able to safely discharge the runoff from a ten-year, twenty-four-hour precipitation event. Thirty CFR 816.46(g)(1) calls for a twenty-five-year, twenty-four-hour precipitation event.

RESPONSE: Paragraph (7)(c) has been changed to call for a 25-year, 24-hour event to correct the typographical error.

(26) COMMENT: Paragraph (7)(j) specifies a 10-year precipitation event for spillway construction rather than 26-years as specified in the federal regulations. This is apparently a typographical error which should be corrected in the final version.

RESPONSE: This was a typographical error and has been changed.

(27) COMMENT: Amend (7)(a)(ii)(A) by changing the volume from 3 years' accumulation to 1 year accumulation.

RESPONSE: The proposed change is inconsistent with 30 CFR 816.46(b)(1) and is therefore rejected.

(28) COMMENT: (7)(ii)(A). A direct measurement of sediment accumulated in ponds in the area should be allowed as an estimate of sediment yields.

RESPONSE: This would be inconsistent with 30 CFR 817.46 (b)(2). The comment is therefore rejected.

(29) COMMENT: In (7)(u), replace "state and federal water quality" with "effluent."

RESPONSE: The proposed change is inconsistent with 30 CFR 816.46(u) and is therefore rejected.

(30) COMMENT: Add the following wording to paragraph (10): "The department may authorize the retainment of a temporary impoundment as provided in Rule VII(7), provided the volume of the sediment storage structure is returned to an equal or greater capacity than the original impoundment and the permitte has received written commitment from the future surface landowner that the structure will be maintained using an acceptable SCS maintenance program."

Response: If a temporary impoundment required by subsection (7) meets the criteria of (10)(a), there is no reason it could not remain as a permanent impoundment. The proposed addition is therefore rejected.

(31) COMMENT: Paragraph (10)(a)(i) makes no provisions for discharges into receiving waters naturally exceeding state and federal water standards.

RESPONSE: The rule states that the discharge will not degrade receiving waters to less than state and federal water quality standards. No provision is needed for the quality of the receiving waters. The comment is therefore rejected.

(32) COMMENT: Amend (12)(b) by eliminating "as requested by the department" and replacing "can be" with "is".

RESPONSE: The wording is intended to require the operator to demonstrate prior to mining that the lands proposed to be mined can be restored to the approximate premining recharge capacity. If the proposed language is inserted, only or after the fact check would be done to see if the mined lands were restored to the approximate premining recharge capacity. After mining there is no remedial measure available to correct the situation and the Strip and Underground Mine Reclamation Act requires that remedial measures must be available. The comment is therefore rejected.

(33) COMMENT: (12)(a). How will pre-mining recharge capacity be determined?

RESPONSE: The technique may vary from site to site. The rule has been written to allow the use of the scientifically acceptable technique best suited to the specific site.

(34) COMMENT: (13)(a). How is monitoring of infiltration rates to be conducted and what is its purpose? It seems that a replacement of materials of the same texture as pre-mining materials is the best practical solution to insure that infiltration rates will be similar. If it is discovered that pre-mining infiltration rates are substantially different than post-mining infiltration rates, what will then occur?

RESPONSE: Infiltration rates should be measured using state of the art techniques. The technique chosen should at least be reproducible so that relative values can be compared between areas under different treatments. Infiltration is the surface phenomenon which must occur in order for recharge to take place and infiltration is inversely related to runoff. Changes in the rainfall runoff relationship may have repercussions in changes in drainage density on the reclaimed landscape.

(35) COMMENT: Clarify (13)(b)(i)(B) by expressly providing that it is non-compliance with an MPDES permit that triggers the notification requirement.

RESPONSE: The permit condition referenced is a condition of a permit issued under the Strip and Underground Mine Reclamation Act. The proposed change is therefore rejected.

(36) COMMENT: In (13)(b)(v), replace "provide an analytical quality control program including" with "use."

RESPONSE: In order to maintain consistent results a quality control program is necessary. The comment is therefore rejected.

(37) COMMENT: Delete (14)(c) and (d) because an operator should not be held liable in perpetuity from a well after it is transferred.

RESPONSE: The proposed rule requires only secondary liability until bond release. The comment is therefore rejected.

(38) Section (15) applies only to supplies of water from an underground source and does not include surface sources as required in 30 CFR 816.54.

RESPONSE: The department agrees that the rule is deficient in this respect and the rule has been amended to comply.

(39) COMMENT: The criteria for biological community in (18)(a) and (c)(i) through (c)(iv) should be more adequately defined.

RESPONSE: The comment is inconsistent with 30 CFR 817.57 and is therefore rejected.

RULE VIII TOPSOIL

(1) COMMENT: In (4) on the 9th line, insert after "disturbance" the clause "unless otherwise authorized by the department" in order to give the department and operator flexibility in emergency cases.

RESPONSE: The department agrees that flexibility to deal with emergency situations is desirable. The proposed language has been adopted with the addition of the phrase "in emergency situations".

(2) COMMENT: In (6), allow scarification after topsoiling if no harm will be caused to topsoil and revegetation.

RESPONSE: There is sufficient flexibility in paragraph (6) to allow scarification of topsoil after topsoiling in the phrase ". . .or other appropriate methods. . ." The comment is therefore rejected.

(3) COMMENT: In the title of (7), replace "Prevention of" with "minimize" because erosion cannot be completely prevented.

RESPONSE: Neither the act or the rules require complete prevention of erosion. The title has been changed to "Minimization of Erosion".

(4) COMMENT: In line 2 of (11)(a), insert after "is" "equally or" in order to allow substitution of material if they are equally suitable for restoration of land capability and productivity.

RESPONSE: The department agrees that if overburden materials are equal to topsoil materials they may be substituted. The change has been made.

(5) COMMENT: Paragraph (11)(b) is incomplete. It also requires departmental approval of laboratories.

RESPONSE: Due to a typographical error the paragraph is incomplete. The phrase "of field site trials and greenhouse tests" has been added. The department does not intend to approve laboratories and the language has been deleted.

RULE IX REVEGETATION

(1) COMMENT: Rule IX is excessively concerned with the technical aspects of revegetation.

RESPONSE: Only by being very technical can the success of revegetation be adequately measured. The comment is therefore rejected.

(2) COMMENT: The wording of paragraph (2) is confusing in that the first sentence appears to allow complete substitution of introduced for native species. Alternate language was proposed.

RESPONSE: The commentor apparently misunderstood the predominately native species requirement other than temporary cover. Paragraph 2 requires that mixtures be predominately native. This means that most of the species must be native. Any introduced species used must be of equal or superior utility, but in all cases may not compose most of the mixture. The comment is therefore rejected.

(3) COMMENT: In (2), lines 3 and 4, substitute "desirable and necessary to" for "of equal or superior utility."

RESPONSE: The requirement for equal or superior utility is necessary to accomplish 82-4-233(1)(a). The proposed change is therefore rejected.

(4) COMMENT: Change (3) to read as follows: Timing. Seeding and planting of disturbed. . .after final preparation. ~~but shall in no case be more than 90 days after topsoil has been replaced.~~ The normal period. . .

RESPONSE: Allowing topsoil to lay unseeded results in excessive erosion. The proposed change is therefore rejected.

(5) COMMENT: Change (4) to allow more flexibility in the use of mulch and cover crops.

RESPONSE: The last sentence of (4) in the proposed rules allows the department adequate flexibility. The proposed change is therefore rejected.

(6) COMMENT: Change (5) to read: "Where wildlife habitat is the approved post-mining land use, the permittee shall consider the needs of wildlife, including food, water, cover and space, in the selection of plant species and design of the reclamation plan." Plant groupings. . .

RESPONSE: 82-4-233(1)(a) requires the area to feed wildlife comparable to that the area could have sustained prior to mining. Therefore wildlife must be considered on all areas. The comment is therefore rejected.

(7) COMMENT: Change (8) to read: Soil amendments. Soil amendments. . .deemed necessary by the department. Soil amendment application rates shall be based on need as determined by soil analysis.

RESPONSE: The department agrees that this would clarify the basis for using soil amendments. The change has therefore been incorporated.

(8) COMMENT: Change (12) to read: If the department determines that the repair of rills or gullies would result in excessive disturbance to established vegetation, and that natural stabilization by vegetation is likely to occur, the requirement to repair such rills or gullies maybe waived.

RESPONSE: The propose change conflicts with 30 CFR 816.106, which is required for state permanent programs. The proposed change is therefore rejected.

(9) COMMENT: Change (15)(a) to require reference areas only for major types.

RESPONSE: Small types such as riparian types are often very important to the overall ecology of the area. The comment is therefore rejected.

(10) COMMENT: Change (15)(a)(i) to read: Success of revegetation. . .shall be established for each major native community type found in the mine area.

RESPONSE: For the reasons set forth in the previous response, the proposed change is rejected.

(11) COMMENT: Change (15)(a)(iii) to read: Reference areas. . .by the SCS. When a good. . .(50% or less utilization). The department may authorize reference areas typical of range in less than "good" condition where appropriate.

RESPONSE: In most cases, only reference areas in a good or better range condition can accurately depict the grazing pressure the area could have sustained prior to mining. Language has been added to allow the use of reference areas in less than good condition where the area is unable to be returned to a good condition.

(12) COMMENT: Management types should be used in place of community types because community types are a response to past or present management techniques. The use of USDA or USDI guidelines would be the most accurate means to measure success on revegetated areas.

RESPONSE: The past management of an area often affects the carrying capacity of the area and thus compliance with 82-4-233(1)(a). The department agrees that a provision must be included for areas in a disclimax as a result of past grazing and such a provision has been incorporated. However, only a system with the precision of community types can accurately compare pre- and post-mining vegetation. Many of the species used in revegetation do not fit into USDA or USDI guidelines properly. The comment is therefore rejected.

(13) COMMENT: As in (15)(a)(iii) it is impossible to have an ungrazed reference area without causing a change in the species composition of the site. Any site designated as a reference area should be put under proper grazing management.

RESPONSE: Several operators have had ungrazed reference areas, one for 5 years. It would be unwise to nullify the value of this data. The department feels that compensations can be made to make these areas directly comparable to revegetated areas. The comment is therefore rejected.

(14) COMMENT: Clipping plots required in paragraph (15) should include all vegetation for a total productivity measurement with reliance on canopy coverage for species composition.

RESPONSE: The rule has been modified to require clipping by morphological classes. The department feels that the carrying capacity and seasonal utility cannot adequately be measured without clipping the morphological classes separately. The comment is therefore rejected.

(15) COMMENT: Since the usefulness of reclaimed lands for grazing will be the final determination of reclamation success, it is suggested that reference areas and vegetation sampling, although important, should be de-emphasized somewhat in favor or grazing studies at the earliest possible opportunity.

RESPONSE: While grazing studies are required of only the last two years of the bonding period, they will be weighed heavily in bond release determinations.

(16) COMMENT: Change (15)(b)(iii) to read: Production. The current annual production shall be measured by clipping each morphological class ~~species~~ on the revegetated area and the reference areas. Weighted. . .

RESPONSE: The department agrees that it is not necessary to measure production by species and that measurement by morphological class will suffice. The suggested change has been made.

(17) COMMENT: The methods of measuring production and canopy cover should be specified. At a minimum they should be conducted by scientifically acceptable techniques approved by the department.

RESPONSE: The department is of the opinion that because proper measuring methods vary greatly between situations, specific methods should not be set forth in the rules. However, Rule II(1)(b) has been reworded to require "All tests, analyses, or surveys. . .shall be performed or certified by a qualified person using scientifically acceptable techniques approved by the department".

(18) COMMENT: Change (15)(b)(vi). Diversity. The number of species occupying 5% ~~1%~~ or more of the ground cover in the revegetated area will be equal to or greater than the number of species occupying 5% ~~1%~~ or more of the canopy cover in the reference area.

RESPONSE: In developing this section, the department reviewed a large amount of pre-mining data. Utilizing the

5% figure would require too few species to ensure adequate diversity. The comment is therefore rejected.

(19) COMMENT: A diversity index such as the Shannon-Weaver index should be used instead of the weighted diversity formula in (15).

RESPONSE: Selection of a Shannon-Weaver index value that reclamation must meet would not be supported and would therefore be arbitrary. Likewise it would be beyond the intent of the law to require that reclamation have a Shannon-Weaver index value equal to the pre-mining value. The proposed change is therefore rejected.

RULE X PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES

(1) COMMENT: Paragraph (1) of this rule does not distinguish between raptors inhabiting the area on a permanent or seasonal basis and those migrating through the area. Conceivably, golden eagles could be sighted daily during migration periods but would not be affected by any activities in the proposed mine area.

RESPONSE: The rule only requires notification, the impact will then be assessed. The comment is therefore rejected.

(2) COMMENT: Most of the criteria contained in the document referenced in paragraph (2) relate to aesthetic considerations and are largely inappropriate on a mine site.

RESPONSE: This comment is inconsistent with 816.97(b) which is required for state programs. The comment is therefore rejected.

(3) COMMENT: Paragraph (6), the enhancement of wildlife values, may result in detriment of the area for livestock.

RESPONSE: 82-4-233(1)(a) does not allow decreasing the areas livestock carrying capacity. The rule requires only equal or greater. The comment is therefore rejected.

(4) COMMENT: Rule X should include the provision in 30 CFR 816.97(c) that distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, Powerine Contacts by Eagles and other Large Birds. This appears to be an oversight.

RESPONSE: The provisions of 816.97(c) were inadverdently omitted and have been included in the final rules.

(5) COMMENT: This rule lacks provisions for the establishment of water bodies for wildlife benefits.

RESPONSE: Under 82-4-233(1)(a) if a body of water is needed to reestablish the wildlife of the area, it could be required. The comment is therefore rejected.

RULE XI AIR RESOURCES PROTECTION

NO COMMENT.

RULE XII POST MINING LAND USE

(1) COMMENT: Amend the rule by requiring "livestock and wildlife grazing" rather than "grazing and wildlife habitat."

RESPONSE: The suggested modification is closer to the language of 82-4-233(1). The proposed language has been incorporated.

(2) COMMENT: Rule XII should state that the postmining land use shall be grazing and wildlife habitat as outlined in section 82-4-233(1) of the MCA unless an alternate land use is approved under Rule XVI.

RESPONSE: Reference to the MCA is not required. Therefore the comment is rejected.

RULE XIII COAL CONSERVATION

(1) COMMENT: The phrase "utilizing the best appropriate technology currently available to maintain environmental integrity" should be dropped because the department has no authority to replace use of this technology to conserve coal.

RESPONSE: This rule requires use of best appropriate technology to maintain environmental integrity rather then to conserve coal. The comment is therefore rejected.

RULE XIV ALLUVIAL VALLEY FLOORS

(1) COMMENT: The phrase "not within the affected area" should be replaced with "in adjacent areas."

RESPONSE: The law does not allow mining to "interrupt, discontinue, or preclude farming on alluvial valley floors. . ." nor to "materially damage the quantity or quality of water. . . that supply these valley floors. . .". Any mining operation that would disrupt the essential hydrologic functions of any alluvial floor cannot be allowed. The proposed change is therefore rejected.

(2) COMMENT: Modify (2)(a) to provide that operations may not interrupt, discontinue, or preclude farming on "adjacent" alluvial valley floors.

RESPONSE: This modification is contrary to the 82-4-227 (3)(a)(i), which is not limited to adjacent alluvial valley floors. The comment is therefore rejected.

(3) COMMENT: Modify (2)(d) by adding "and (c)" after "and (b)" because 82-4-227(4) applies the grandfather provisions to the material-damage test.

RESPONSE: The department agrees. The proposed modification has been incorporated.

(4) COMMENT: Rule XIV relates to 30 CFR 785.19(e)(3)(ii) which discusses "demonstration that TD concentrations in excess of the Mags and Hoffman criteria will not cause crop yield decreases." There is a reference to Montana Rule XIV(6) (b) covering this, yet no (6)(b) exists in the rules.

RESPONSE: Paragraph (6)(b) which contains the provisions of 785.19(e)(3)(ii) was inadverdently omitted from the original draft and has been inserted.

RULE XV PRIME FARMLAND

(1) COMMENT: In (2)(a)(iii) after "such horizons or strata" add "to be used in place of the B horizon" and amend (2)(c)(iv) to read: "The material from. . . shall be replaced in ~~this~~ order [i.e., materials in (2)(a)(iii) and (2)(a)(ii)] ~~and in~~ such a manner. . ."

This would limit topsoil salvage to 2 rather than 3 lifts.

RESPONSE: These comments are noted and the department has decided to drop the language in (2)(a)(i), (2)(a)(ii), and (2)(a)(iii) and replace it with new language similar to that of Rule VIII. The new language establishes the 2 lift

procedure of Rule VIII as the standard procedure but allows the department to require 3 lifts if necessary to achieve pre-mining productivity. This amendment in this manner assures compliance with the federal requirements. Paragraph (2)(c) (iv) has been amended to reflect the amendment to (2)(a).

(2) COMMENT: Amend (2)(d)(iii)(A) to require 3 years of crop yield data instead of 5 years of data.

RESPONSE: Rule XIV(6)(b) requires a 5 year cropping history, which the department feels is a minimum time requirement for Montana situations. The subsection in question must be kept as is to be consistent with Rule XIV(6)(b). The comment is therefore rejected.

(3) COMMENT: Subsection (3) requires reclamation of prime farmland to farmland. This is contrary to 82-4-233.

RESPONSE: The department agrees. Reclamation to cropland can be proposed as alternate reclamation pursuant to 82-4-232, but the department cannot require it. The rule has been changed accordingly. Likewise the portion of Rule XVI allowing rangeland, pastureland, or hayland to be reclaimed to cropland has been deleted as it conflicts with 82-4-232(7). Also, the informational requirement in Rule II(5)(d)(i) has been deleted.

RULE XVI ALTERNATE RECLAMATION

(1) COMMENT: Modify (1)(e) to expressly require monitoring only during the bonding period.

RESPONSE: Monitoring past bond release would not be useful. The proposed modification has been made.

(2) COMMENT: Modify the first clause in (5)(a) to read: "If a land use other than livestock and wildlife grazing is proposed,. . ."

RESPONSE: The proposed modification conforms this to the statute and the Rule XII as modified. The suggested change has been made.

(3) COMMENT: Modify (5)(b)(ii) to give the department discretion in whether to require a postmining land use for formerly improperly managed land to be comparable to surrounding properly managed land.

RESPONSE: The present mandatory language is required by 30 CFR 816.133(b)(2). The comment is therefore rejected.

(4) COMMENT: In subsection (6)(a)(ii) 5% is too steep to allow cropping.

RESPONSE: After reviewing SCS criteria for land capability the department feels that 5% is adequate to prevent erosion. The comment is therefore rejected.

(5) COMMENT: The definition of "historically used for cropland" may allow a company to reclaim previously non-cropped areas to cropland.

RESPONSE: In addition to changing the definition of "historically used for cropland", the only reference to historic use (5)(b)(iii) has been deleted from this rule.

(6) COMMENT: Delete (6)(a)(iii) in its entirety because it is inconsistent with Rule IX(5)(c)(ix).

RESPONSE: The department assumes that the commentator meant to refer to Rule XVI(5)(c)(ix). House Bill 406, passed in 1979, authorizes the land to be reclaimed to cropland only if erosion can be prevented to the extent achieved prior to mining. In order to meet this requirement, only areas formerly in cereal crops or similar crop with regard to erosion can be reclaimed to cereal crops. Rule XVI(5)(c) is inconsistent with HB 406 and must be changed. The proposed change is rejected.

RULE XVII AUGER MINING

NO COMMENT

RULE XVIII UNDERGROUND MINING

(1) COMMENT: Care should be taken in applying the liability insurance for subsidence requirement of (1)(a)(iii)(C)(IV) to rangeland because of the expense involved.

RESPONSE: Proof of subsidence liability insurance is required only if liability insurance is required under (3)(d). Paragraph (3)(d) gives the department the option of requiring restoration or purchase of damaged property instead of purchase of liability insurance. Where appropriate, the department will not require liability insurance.

(2) COMMENT: Montana Rule XVIII(1)(a)(vii) does not contain the requirement in 30 CFR 784.25(b) that the plan should describe the influence of the backfilling operation on active underground mine operations.

RESPONSE: A portion of 784.25(b) was inadvertently deleted and has been reinserted to maintain consistency with the federal rules.

(3) COMMENT: Subsection (1)(c) appears to remove some of the department's authority to regulate in-situ uranium mining.

RESPONSE: Montana law authorizes the department to regulate the surface effects of in-situ uranium mining. The comment is accepted and paragraph (1) and (3) have been amended to be consistent.

(4) COMMENT: In (3)(d) the surface owner should be given the right to purchase the block of coal below his property as is done in Pennsylvania.

RESPONSE: This suggestion, although perhaps a good one, could be accomplished only through legislation. The comment is therefore rejected.

(5) COMMENT: It should be clear that (3)(e)(i) and (iii) do not require geologic investigation when the proposed mining technique and the depth of the seam adequately ensure that subsidence will not take place.

RESPONSE: As the rule is written, the department may require only those studies necessary to determine whether subsidence will be a problem. In the hypothetical situation mentioned above, geologic studies would not be required.

(6) COMMENT: In (3)(e)(ii), the term "significant" should be defined.

RESPONSE: The term adequately sets forth a concept that must be applied on a case-by-case basis. The comment is therefore rejected.

RULE XIX PROSPECTING

(1) COMMENT: Rule XIX(1)(a) should require information with respect to "the person seeking to explore" (as required in 30 CFR 776.11(b)(1) and 776.12(a)(1)). This is in addition

to information concerning representatives who will be present at and responsible for prospecting. Where the applicant is different than the representative, both names should be required.

RESPONSE: "The person seeking to explore" is equivalent to the applicant, the name of whom is required on the application form. The use of the form is required by the rule. The comment is therefore rejected.

(2) COMMENT: Rule XIX(1)(c) states ". . .identification of any significant historical, archaeological, ethnological, and cultural values in the area to be affected." 30 CFR 776. 12(a)(3)(i) states ". . .districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register. . ." The word "significant" may be misconstrued to mean that a survey need only be conducted for significant sites and need not pay attention to National Register criteria. OSM is concerned that Montana make clear "significant" is broader than National Register criteria.

RESPONSE: Any "district, site, building, structure or object listed on or eligible for listing on the National Register. . ." is definitely significant. The department feels significant in all cases covers, but is not limited to National Register criteria. The comment is therefore rejected.

(3) COMMENT: Paragraph (1)(f)(iii)(C) would be an impossibility without previously surveying in detail the entire area. The survey may cause more environmental damage than the actual drilling.

RESPONSE: The route would largely be roads and vehicle paths shown on USGS 7 1/2 minute topographical maps. In most cases the route off of roads can be estimated on a topographic map. The department does not feel a survey would ever be needed. The comment is therefore rejected.

(4) COMMENT: In (1)(f)(iii)(H), the certification should not refer to "strip mining" laws.

RESPONSE: This rule deals with prospecting rather than mining. The words "strip mining laws of Montana" have been replaced with "Part 2, Chapter 4, Title 82, MCA, and rules adopted pursuant thereto."

(5) COMMENT: The requirement in paragraph (1)(i) to furnish the phone number of the surface owner is unnecessary.

RESPONSE: The department agrees and the requirement has been deleted.

(6) COMMENT: The regulations should be changed to include the criterion of "significant disturbance" and the 250 ton cut-off to distinguish between exploration programs that call for the full permit process and those for which a simplified notice of intent will suffice.

RESPONSE: The proposed change is inconsistent with 82-4-263(24) and is therefore rejected.

(7) COMMENT: The notice and hearing procedures are too expensive for exploration activities.

RESPONSE: The comprehensive notice and hearings requirements apply only to prospecting conducted by means of test pit. Application to test pits is required for state programs by the 250 ton requirement of 30 CFR 776.14.

(8) COMMENT: The cross references between XIX and VII are very confusing.

RESPONSE: Section (2)(a) of rule VII has been moved to XIX(6) which eliminates most of the cross references.

(9) COMMENT: The plugging requirements be changed to conform to the federal (USGS) requirements.

RESPONSE: The USGS requirements are similar to those proposed in the rules, with the exception of the placement of seismic plug. The department adopted the USGS requirements in (6)(a) since it will not increase the operator's cost, and it will eliminate the possibility of conflicting requirements.

RULE XX BONDING

(1) COMMENT: Section (6) should contain information such as to whom a bond should be payable, conditions upon which it is based, duration of the bond, certain surety bond conditions, and collateral bond conditions (Thirty CFR 806.12(a) through (f) is not specifically included in Montana Rule XX. The bond should be conditioned upon faithful performance of the permit and should cover the entire permit area. The meaning of the terms "surety bond" and "performance bond (defined terms) and "bond" and "performance bond" (used but not defined) is unclear.

RESPONSE: Section 82-4-223 sets forth the requirements as to payee and conditions. Section 82-4-232(6) addresses the duration. The terms "bond" and "performance bond" are self-explanatory.

(2) COMMENT: Thirty CFR 870.11(f)(2), the regulatory authority is required to issue notice of its decision to release or not to release a bond within 60 days of receipt of application or within 30 days of the close of the public comment period, whichever occurs last. The Montana rule, section (11), does not include this requirement.

RESPONSE: The department has chosen not to adopt this time limit in order to coordinate bond release procedure for different permits.

(3) COMMENT: There should be clear authority to forfeit the bond, as well as procedures and criteria for such forfeiture, as contained in 30 CFR Part 808. Many of these are contained in the state bond form, but the requirements of 30 CFR 808.12 and 808.13(b) need addressing.

RESPONSE: The department agrees. These criteria have been added as subsection (13).

(4) COMMENT: The rule should contain minimum insurance coverage (30 CFR 806.14(a)), and insurance policy should contain a rider requiring notice of any substantive change in coverage (30 CFR 806.14(b)).

RESPONSE: The department agrees. The requirements have been added in an additional subsection (14).

(5) COMMENT: The proposed procedures for bond release for prospecting operations are too time consuming and expensive.

RESPONSE: The department is not aware of any rationale for exempting prospecting operations from the notice and hearing requirements from the bond release. Public notice and hearing are as necessary for prospecting bond release as for mine bond release. The comment is therefore rejected.

RULE XXI ANNUAL REPORTS

NO COMMENT.

RULE XXII AREAS UPON WHICH COAL MINING IS PROHIBITED

(1) COMMENT: This rule should be applicable to uranium as well as coal.

RESPONSE: This rule implements the changes made in 82-4-227 by SB 515. Those changes are applicable to coal mining only. The proposed amendment must therefore be rejected.

(2) COMMENT: (1)(a). Need 106(2b) compliance --- Advisory Council & SHPO.

RESPONSE: The department is not regulated under 106 of the federal antiquities act. The comment is rejected.

(3) COMMENT: The Surface Mining Control and Reclamation Act Section 522(e)(2) contains a prohibition of strip mining in National Forests under certain circumstances, and an outright ban on strip mining in the Custer National Forest. Neither provision is incorporated into SB 515, so should be included in Rule XXII.

RESPONSE: The general prohibition contained in 522(e)(2) applies only to federal lands within national forest. The department has no authority to prohibit mining on federal lands. The comment is therefore rejected.

(4) COMMENT: The final sentence in 30 CFR 761.12 (f)(2) is omitted in the Montana rule: "A permit for the operation shall not be issued unless jointly approved by all affected agencies." The federal regulation states that a permit is not to be issued until there is joint approval.

RESPONSE: The department has its own time frames and oftentimes cannot wait for other agency decisions. The department therefore rejects this approach in favor of its present approach of conditioning authority to commence mining on obtainment of all required agency approvals.

(5) COMMENT: Mining should be prohibited on lands eligible for listing on the National Register of Historic Sites (30 CFR 862.5).

RESPONSE: Paragraph (1)(a) repeats the language of PL 95-87 verbatim. The proposed change is therefore rejected.

(6) COMMENT: Section (4)(b) should reference all of section (1) rather than just section (1)(a).

RESPONSE: The department agrees that this change is required by the P.L. 95-87 and the federal rules and the recommended change has been made. To further clarify the meaning, a reference to 82-4-227(13) has been added to (b)(i)

(7) COMMENT: Section (4)(b)(ii) should include all of the lands referred to in 30 CFR 716.11.

RESPONSE: The department agrees. A reference to 82-4-227(7) and (13) has been added.

RULE XXIII AREAS UPON WHICH COAL MINING IS PROHIBITED

(1) COMMENT: The rule does not provide judicial review of decisions on petitions as specified in 30 CFR 764.19(c).

RESPONSE: The department cannot provide judicial remedy or regulate the courts of Montana. Failure to act would, however, subject the department to a mandamus action. Wrongful action would subject the department to an injunction action.

(2) COMMENT: Thirty CFR § 764.17(e) requires the regulatory authority to issue a detailed statement "on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal." This requirement is absent from Rule XXIII and should be included in the final language.

RESPONSE: This requirement appears in section 10(3) of SB 515. Section 2-4-305(2) provides that rules may not unnecessarily repeat statutory language. The comment is therefore rejected.

(3) COMMENT: It would be helpful to the public if the department would publish its plans for establishing a "data base and inventory system" as required under this rule.

RESPONSE: The department does not intend to publish these plans as rules. The department will, however, provide information on the department's plans to any person who requests it.

(4) COMMENT: (4)(a)(i). This, as worded, could lead to a massive volume of "class action" type petitions requesting designation as unsuitable.

This would be a lot clearer if sections (4)(b)(i)(c) were placed ahead of (4)(a)(i).

The time limit allowed for starting hearings (10 months) seems excessive considering that the petitioner has to submit a petition prior to close of the comment period on the permit application.

RESPONSE: The comment is inconsistent with 30 CFR, Part 769 and is therefore rejected.

RULE XXIV INSPECTION & ENFORCEMENT

(1) COMMENT: Subsection (4) should have a built-in deterrent to preclude harassment by anonymous persons making irresponsible accusations.

RESPONSE: This subsection provides that the department shall inspect when basis for the allegation or other corroborating evidence from the allegation is provided. If this is provided, then the department must inspect. Under this procedure the department may and will screen out unfounded allegations. In addition, departmental inspection is required before any notices or orders can be issued. These provisions should preclude harassment. The comments are therefore rejected.

(2) COMMENT: Modify (4) by adding "or unless disclosure is required under other federal or Montana law."

RESPONSE: The commentator expresses doubt that the individual's name can be kept confidential under Montana law. Article II Section 9 of the Montana Constitution states that documents of public bodies shall be open to the public except when the demand of individual privacy clearly exceeds the merits of public disclosure. Because requiring disclosure of the complainant's identity might have a chilling effect on the public's willingness to report violations, the department has determined that the demand of individual privacy exceeds the merits of public disclosure. Public Law 95-87 does not require disclosure. The proposed language has therefore not been added.

(3) COMMENT: Section (4) should give the department, rather than the authorized representative, power to act on citizen complaints. OSM is concerned that by stating "department" rather than "authorized representative" it not be construed as a matter of law that an authorized represen-

tative could not act without department approval. It should be made clear that "violation" refers to violations of the statute, regulations, or the permit.

RESPONSE: Language clarifying the term "violation" has been added. The department can only act through its representatives. The original language adequately complies with federal requirements.

(4) COMMENT: Thirty CFR 842.15 provides for an informal review, and this is not included in the Montana rule.

RESPONSE: In a state with a small regulatory staff, this procedure is unnecessary because the director is aware of the staff's activities. Any person may contact the department and obtain a copy of the document required in (4)(c). In addition, it is not clear that 842.15 is a requirement for state programs. No parallel language will be added.

(5) COMMENT: In section (6), service of notices and orders should be allowed, according to 30 CFR 843.14, to be presented to the person who appears to be in charge of the operation, or, if not available, to any individual who appears to be an employee or agent of the person to whom it is issued. Montana's service requirement differs from the federal requirement; and at this time, it is unclear whether the rule is less stringent.

RESPONSE: The department does not anticipate any problem with locating the person in charge of the operations. However, the department has added that if the person in charge cannot be located, service can be made on any agent or employee.

(6) COMMENT: The cessation order provisions and notice of violations should apply to exploration permits (30 CFR 843.11(b)(1).

RESPONSE: The department agrees that the language of (7) incorrectly intimates that notices of violation and cessation orders are applicable only to mining operations. The language has been changed to correct this error.

(7) COMMENT: Add the following language to (8): "Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty and of the duration of the suspension of a permit."

RESPONSE: The proposed language expresses procedures which, though not reflected in rules, have been implemented by the department and are consistent with the act. However, because the department has not written comprehensive rules on mitigation factors, inclusion of the proposed language might give undue emphasis to inability to comply. The proposed language has therefore not been added.

(8) COMMENT: The provisions of 30 CFR 843.11(d), (e), and (f) regarding cessation orders are not specifically addressed.

RESPONSE: The language of (d) has been added as subsection (9). Authority to modify, terminate, or extend is inherent in the authority to issue cessation orders. Section 82-4-25(1) provides that the cessation order is in effect until the condition has been corrected. Termination cannot affect the duty to assess penalties under the Montana statute. Paragraphs (e) and (f) have therefore not been incorporated.

(9) COMMENT: The mining companies should not be held liable for actions of inspectors that make inspections without a company official present.

RESPONSE: Rule XXIV does not address the question of operator liability for injury to inspectors. This is a matter of tort law that is not proper for this rule. The comment is therefore rejected.

(10) COMMENT: No penalties or established procedures comparable to the provisions of 30 CFR Part 845 are in this rule.

RESPONSE: Penalties are provided for in 82-4-254. Although the department in assessing penalty takes into account the same factors as provided in 845, the department has not established a point system. OSM has indicated that a point system is not required.

RULE XXV SUSPENSION & REVOCATION

(1) COMMENT: The term "unwarranted failure to comply" is already defined in 82-4-203(31) and no definition is therefore necessary in this rule.

RESPONSE: The department agrees. The definition has been dropped.

(2) COMMENT: The term "willful violation" is not used in 82-4-251(3). The term "willfully", which is used in 82-4-251(3), is defined in section 1-1-204(5). The definition should therefore be eliminated.

RESPONSE: The department agrees. The definition has been dropped.

(3) COMMENT: The rule should specify the effect of an order of revocation or suspension in conformance with 30 CFR 843.13(e).

RESPONSE: The department agrees that its authority to order affirmative action pursuant to suspension and revocation orders should be clearly set forth in the rule. The necessary language has been incorporated.

RULE XXVI SMALL MINER ASSISTANCE PROGRAM

(1) COMMENT: Small miner assistance should be available to small uranium and other hard rock miners.

RESPONSE: The Montana Strip and Underground Mine Reclamation Act is applicable to only coal and uranium. The authority for this rule is contained in 82-4-222(3). This subsection is limited to coal mining only. For lack of statutory authority, the proposed change is rejected.

(2) COMMENT: In Rule XXVI(5)(b), there is no reference to surface and groundwater quality as required in 30 CFR 795.16(b)(1)(ii).

RESPONSE: The department agrees that this requirement for permanent programs, and the rule has been amended accordingly.

(3) COMMENT: It appears that the term "qualified laboratories" includes consulting firms.

RESPONSE: Paragraph (6)(b)(i) contains the qualifications for laboratories. The meaning has been clarified to indicate that, to be qualified, a laboratory must meet all 7 criteria. This has been accomplished by adding an "and" between (F) and (G). Thus, to be qualified, a laboratory must be capable of collecting necessary field data and samples and a consultant must have laboratory capabilities.

RULES XXVII, XXIX, AND XXX ABANDONED MINE LAND RECLAMATION PROGRAM

(1) COMMENT: For no apparent reason, Rules XXIX(4) and XXX(4) do not list the same priorities.

RESPONSE: The abandoned mine lands programs are federally funded and the state must adopt federal criteria and procedures. Thirty CFR 874.13 lists priorities and requires the differences in priorities.

(2) COMMENT: Rule XXIX(4)(a) and XXX(4)(a) both refer to Rule XXVII(4)(a) - (f). No such designation exists.

RESPONSE: The citation refers to XXVII(4)(a), (b), (c), (d), (e), and (f).

(3) COMMENT: For no obvious reason there is a difference with regard to subsections (6) and (10) of the three rules.

RESPONSE: The extensive subsection (6) in Rule XXVII details the procedures for entering if consent cannot be obtained. Because there is no statutory authority to enter without consent for abandoned hard rock and open cut mined lands, these provisions were not included in Rules XXIX and XXX.

(4) COMMENT: A discrepancy exists between Rule XXVII (10) and subsection (10) of Rules XXIX and XXX.

RESPONSE: The discrepancy derives from the fact that the department has authority to file liens for improvements to abandoned coal mine lands, but that it does not have that authority with regard to abandoned hard rock or open cut mined lands.

RULE XXVIII RESTRICTION ON FINANCIAL INTERESTS

(1) It should be made explicit in section (1)(a)(ii) that failure of the employee to file a statement will subject the employee to removal (30 CFR 705.6(b)).

RESPONSE: The department agrees that failure to file the financial interest statement should subject the employee to removal. This language has been added as (1)(e).

(2) COMMENT: There should be a remedy provided for employees failure to abide by the gift or gratuity provisions should subject the employee to disciplinary action. Language providing for suspension without pay and termination for repeated violation has been incorporated as (4)(c).

(3) COMMENT: Section (4)(d) should be rewritten to make it clear that it applies only to prohibited interest of the commissioner.

RESPONSE: The department agrees that the language of (4) (d) is unclear in this regard and the appropriate amendments have been made. Paragraph (4)(d) has been designated subsection (6).

(4) COMMENTS: There should be an appeals procedure for employees as discussed in 30 CFR 705.21.

RESPONSE: The department agrees. The language of 705.21 has been incorporated into (5)(c).

RULE XXXI APPLICABILITY

(1) COMMENT: Section (3)(b) should require that the existing structure meet the performance standards as required by 30 CFR 786.21.

RESPONSE: The department agrees that this is a federal requirement and the modification has been made.

(2) COMMENT: Although Rule XXIII appears to apply only to coal mining, the issue is not clear because Rule XXXI does not so indicate.

RESPONSE: The department agrees. Rule XXXI(4) has been amended by specifically indicating that Rule XXIII applies only to coal.

COMMENTS APPLICABLE TO ALL RULES

(1) COMMENT: At hearing the testimony of local taxpayers should be given more weight than the testimony given by non-resident types in the so-called national interest.

RESPONSE: In adjudicatory hearings, testimony is taken for the purpose of proving certain facts upon which a decision is made. Testimony is given less weight only if its veracity is somehow impugned. In non-adjudicatory

hearings, the testimony of the local taxpaying citizenry is oftentimes a major factor, subject, of course, to the statutory limitations within which the department operates.

(2) COMMENT: Language requiring the department after adoption to eliminate any of those rules that correspond to federal rules that are struck down by the federal courts should be added.

RESPONSE: If portions of the permanent federal rules are struck down as beyond statutory authorization for arbitrariness, or on substantive grounds, then the corresponding Montana section would probably be susceptible to similar challenge. The department would then rewrite or eliminate the regulation. If, however, the OSM regulation were struck down on procedural grounds, o if the rule implements a Montana statutory provision different from the federal law, the department may elect to retain the rule. The comment is therefore rejected.

(3) COMMENT: The department should extend the time for response to these rules.

RESPONSE: The department has allowed as much time for comment as the August 3, 1979 deadline for program submission will allow. In addition, the best interests of the industry, environmental groups, and the citizens of Montana will be best served by early implementation of Montana's permanent program. Early implementation can best be achieved by making a complete submission before August 3. The comment is therefore rejected.

(4) COMMENT: The performance standards unduly repeat federal language.

RESPONSE: The department in initially drafting these rules, has revised federal language when possible and desirable. No specific examples have been given in the comment, and therefore no specific changes have been made.

(5) COMMENT: The department should not enact and enforce rules in areas regulated by other agencies.

RESPONSE: The department, in initially drafting these rules, adopted the recommended approach, as can be seen in the many rules which merely require compliance with relevant statutes and rules and defer to other agencies. No specific

examples have been given in the comment, and therefore no specific changes have been made.

4. The authority for the repeal and adoption of these rules is 82-4-204 and 82-4-205 MCA.

Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State March 4, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

In the matter of the Adoption of a new rule ARM 40-3.101(2)-P10115 relating to public participation in board decision making functions.	NOTICE OF ADOPTION OF A NEW RULE ARM 40-3.101(2)-P10115 PUBLIC PARTICIPATION RULE

TO: All Interested Persons:

1. On January 31, 1980, the Board of Speech Pathologists and Audiologists published a notice of proposed adoption of a new rule relating to public participation in board decision making functions (ARM 40-3.101(2)-P10115) at pages 386 and 387 Montana Administrative Register, issue number 2.

2. The board has adopted the rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PHARMACISTS

In the matter of the Amendment of 40-3.78(6)-S78070 subsection (12) regarding licensing	NOTICE OF AMENDMENT OF ARM 40-3.78(6)-S78070 Subsection (12) LICENSING - GRANT AND ISSUE LICENSES

TO: All Interested Persons:

1. On November 29, 1979, the Board of Pharmacists published a notice of amendment of subsection (12) of ARM 40-3.78(6)-S78070 concerning licensing at pages 1477 through 1479, 1979 Montana Administrative Register, issue number 22. On January 17, 1980 other portions of the rule were adopted as proposed in addition to other changes listed in that notice. The above stated portion was not amended as proposed because of the objections of the Administrative Code Committee to the language which was being substituted for the language in subsection (12) which was being repealed.

2. The board at this time is repealing the language which was noticed for repeal in subsection (12) of the above stated rule amendment. It is not adopting the new language which was noticed, because of the objections of the Code Committee. Shown below is the language as it was proposed for repeal.

" 40-3.78(6)-S78070 LICENSING - GRANT AND ISSUE LICENSES

~~....(12) No license shall be issued for a pharmacy which is kept open more than 56 hours per week, unless at least two registered pharmacists are employed in such pharmacy or drug store on a schedule that will assure the presence of registered pharmacists at all times. This regulation shall not apply where the owner of a~~

~~pharmacy is a registered pharmacist and is continously and personally in charge of such pharmacy.~~

....."

3. The subsection is being repealed for those reasons stated in the notice. The board received no comments or testimony on this portion of the rule.

BY: 
ED CARNEY, ~~DIRECTOR~~
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF RULES relating to the taxation of gasohol	)))	NOTICE OF ADOPTION OF RULES relating to the taxation of gasohol

TO: All Interested Persons:

1. On January 17, 1980, the Department of Revenue published notice of the proposed adoption of rules relating to the taxation of gasohol at pages 76 and 77 of the 1980 Montana Administrative Register, issue no. 1.

2. The Department has adopted Rule I (42-2.18(2)-S18001), Rule II (42-2.18(2)-S18002), and Rule III (42-2.18(2)-S18003).

3. No comments or testimony were received.

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 3/3/80

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46-2.10(18)-S11440(1)(q)(v) and the adoption of 46-2.10(18)-S11491 (RULE I), 46-2.10(18)-S11492 (RULE II), and 46-2.10(18)-S11493 (RULE III) pertaining to medical assistance, speech therapy	NOTICE OF AMENDMENT OF RULE 46-2.10(18)-S11440 (1)(q)(v) AND THE ADOPTION OF 46-2.10(18)-S11491, 46-2.10(18)-S11492, AND 46-2.10(18)-S11493 PERTAINING TO MEDICAL ASSISTANCE, SPEECH THERAPY

TO: All Interested Persons

1. On January 31, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11440(1)(q)(v) and the adoption of Rules 46-2.10(18)-S11491, 46-2.10(18)-S11492, and 46-2.10(18)-S11493 pertaining to medical assistance, speech therapy at page 402 of the 1980 Montana Administrative Register, issue number 2.

2. The agency has amended and adopted the rules as proposed.

3. No comments or testimony were received.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46-2.10(18)-S11440(1)(n)(i) and the adoption of 46-2.10(18)-S11494 (RULE I), 46-2.10(18)-S11495 (RULE II), and 46-2.10(18)-S11496 pertaining to medical assistance, services provided, amount, duration--hearing aid services	NOTICE OF AMENDMENT OF RULE 46-2.10(18)-S11440 (1)(n)(i) AND THE ADOPTION OF 46-2.10(18)-S11494, 46-2.10(18)-S11495, AND 46-2.10(18)-S11496 PERTAINING TO MEDICAL ASSISTANCE

TO: All Interested Persons

1. On January 31, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11440(1)(n)(i) and the adoption of Rules 46-2.10(18)-S11494, 46-2.10(18)-S11495, and 46-2.10(18)-S11496 pertaining to medical assistance, services provided, amount, duration--hearing aid services at page 405 of the 1980 Montana Administrative Register, issue number 2.

2. The agency has amended and adopted the rules as proposed.

3. No comments or testimony were received.

Keith F Colby
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 4, 1980.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.22(1)-S2210 regarding outreach and itinerant services for the hearing impaired and visually impaired	NOTICE OF THE AMENDMENT OF RULE 48-2.22(1)-S2210

TO: All Interested Persons

1. On January 31, 1980, the Board of Public Education published notice of a proposed amendment to rule 48-2.22(1)-S2210 regarding outreach and itinerant services for the hearing impaired and the visually impaired at page 412 of the 1980 Montana Administrative Register, issue number 2.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.22(1)-S2230 regarding the school calendar and school vacations for the Montana School for the Deaf and Blind	NOTICE OF THE AMENDMENT OF RULE 48-2.22(1)-S2230

TO: All Interested Persons

1. On January 31, 1980, the Board of Public Education published notice of a proposed amendment to rule 48-2.22(1)-S2230 regarding the school calendar and school vacations for the Montana School for the Deaf and Blind at page 413 of the 1980 Montana Administrative Register, issue number 2.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.22(2)-S2240 concerning admission of students to the Montana School for the Deaf and Blind	NOTICE OF THE AMENDMENT OF RULE 48-2.22(2)-S2240

TO: All Interested Persons

1. On January 31, 1980, the Board of Public Education published notice of a proposed amendment to rule 48-2.22(2)-S2240 which outlines procedures for admission of students to the Montana School for the Deaf and Blind at page 413 of the 1980 Montana Administrative Register, issue number 2.

3. No comments or testimony were received.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.22(2)-S2250 concerning residence of children at the Montana School for the Deaf and Blind	NOTICE OF THE AMENDMENT OF RULE 48-2.22(2)-S2250

TO: All Interested Persons

1. On January 31, 1980, the Board of Public Education published notice of a proposed amendment to rule 48-2.22(2)-S2250 which concerns residence of children at the Montana School for the Deaf and Blind at page 416 of the 1980 Montana Administrative Register, issue number 2.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF A RULE regarding the transfer of students from the Montana School for the Deaf and Blind to a local education agency	NOTICE OF THE ADOPTION OF A RULE

TO: All Interested Persons

1. On January 31, 1980, the Board of Public Education published notice of a proposed adoption of a rule concerning the transfer of students from the Montana School for the Deaf and Blind to a local education agency at page 417 of the Montana Administrative Register, issue number 2.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the ADOPTION) NOTICE OF THE ADOPTION OF
OF A RULE regarding suspension) A RULE
of a student from the Montana)
School for the Deaf and Blind)

TO: All Interested Persons

1. On January 31, 1980, the Board of Public Education published notice of a proposed adoption of a rule concerning suspension of a student from the Montana School for the Deaf and Blind at page 418 of the 1980 Montana Administrative Register, issue number 2.
2. The agency has adopted the rule as proposed.
3. No comments or testimony were received.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the ADOPTION) NOTICE OF THE ADOPTION OF
OF A RULE regarding expulsion) A RULE
of students from the Montana)
School for the Deaf and Blind)

TO: All Interested Persons

1. On January 31, 1980, the Board of Public Education published notice of a proposed adoption of a rule concerning expulsion of students from the Montana School for the Deaf and Blind at page 419 of the 1980 Montana Administrative Register, issue number 2.
2. The agency has adopted the rule as proposed.
3. No comments or testimony were received.

Marjorie W. King
MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Rick Rose
ASSISTANT TO THE BOARD

Certified to the Secretary of State March 4, 1980.

VOLUME NO. 38 OPINION NO. 68

WILDLIFE - Game farms, wild game enclosed therein, necessity for removal;
WILDLIFE - Game animals, ownership;
MONTANA CODE ANNOTATED - Sections 87-4-401, 87-4-501, et seq.

HELD: Where the fence of a game farm permittee under 87-4-401 et seq., MCA, encloses native wild big game animals, these animals remain the property of the state and may be hunted and taken only in compliance with state law. The state has no responsibility to remove the wild game animals from the enclosure.

25 February 1980

Robert F. Wambach, Director
Department of Fish, Wildlife & Parks
1420 East Sixth Avenue
Helena, Montana 59601

Dear Dr. Wambach:

You have requested my opinion on the following question:

> Where the fence of a game farm permittee under 87-4-401, et seq., MCA, encloses native wild big game animals, is the permittee or the state responsible for removal of those animals from the enclosure?

In addressing this question we do not write on a clean slate. The Big Horn Game Ranch near Hardin, Montana, has been engaged in a series of controversies with the department over the last few years. Both a prior Attorney General's opinion (Vol. 36, No. 112) and an unreported district court opinion (Boyce v. Montana Fish and Game Commission, No. 8529, Thirteenth Judicial District) held that the state is precluded from regulating the hunting of privately-owned animals within the farm.

The present issue does not concern these privately-owned animals, but rather indigenous wild deer populations which were living within the approximately 19,000 acres of the farm when it was fenced. Big Horn apparently intends to stock the farm with privately-owned big game animals and then to allow them to be hunted. The department has issued

a game farm permit to Big Horn for all big game species except deer because of the indigenous population trapped within the fence. There have been several unsuccessful efforts to remove these animals from the farm, including a special hunting season. Big Horn argues that it is the state's responsibility to remove these animals by live trapping, hunting or otherwise, and that if this is not accomplished within a reasonable time the state must be deemed to have abandoned its ownership claim to them.

Part of the problem with these issues stems from the applicable statutes. Section 87-4-401 requires a game farm permit from the director of the department before "engaging in the business or occupation of propagating, owning and controlling game animals (except buffalo)...." That section further provides for the issuance of a permit once the land involved has been fenced "so that no wild or public animals of like species can mix with those confined." There is nothing else specifically provided in the code to answer the questions raised here. By contrast, the Legislature has provided for private bird shooting preserves (87-4-501 et seq.), requires a license to hunt thereon (87-4-504), and has set hunting seasons (87-4-521). Any game animals on a shooting preserve may be hunted only in accordance with applicable license, season and bag limits (87-4-527).

This regulatory precision is absent from the game farm statutes and no implementing regulations have been adopted by the department. In fact the game farm statutes do not even expressly provide that the privately-owned animals confined therein may be hunted. Section 87-4-401 speaks only of "propagating, owning and controlling" the animals, although the assumption at this point by all concerned seems to be that ownership and control includes hunting and killing.

Our Supreme Court, and the courts of other states, have clearly defined the limits and extent of state powers with regard to wild game animals. In State v. Rathbone, 110 Mont. 225, 100 P.2d 86 (1940), the Court noted the values of wild animals and held (110 Mont. at 242):

> Wild game existed here long before the coming of man. One who acquires property in Montana does so with notice and knowledge of the presence of wild game and presumably is cognizant of its natural habits.

It is further clear that the ownership of wild animals is in the state, held in its sovereign capacity for the use and benefit of its people. Rosenfeld v. Jakways, 67 Mont. 558, 562, 216 P.2d 776 (1923); State ex rel. Visser v. Fish and Game Commission, 150 Mont. 525, 530, 437 P.2d 373 (1968). Wild game is not subject to private dominion to any greater extent than the Legislature sees fit to prescribe within the limits of the Constitution. Herrin v. Sutherland, 74 Mont. 587, 601, 241 P. 328 (1925); Rosenfeld, supra; Visser, supra. Montana recognizes both sovereign ownership and the police power as ample bases for wildlife regulation. State v. Jack, 167 Mont. 456, 460, 539 P.2d 726 (1975). Section 70-2-112 provides:

> Wild animals by nature are the subjects of ownership, while living, only when on the land of the person claiming them or when tamed or taken or held in the possession or disabled and immediately pursued.

This does not, however, give a landowner the right to take wild game without regard to law. It merely authorizes him to protect those animals, while on his property, from invasion by another not authorized to be there. Herrin v. Sutherland, supra. See also State v. Mallory, 83 S.W. 955 (Ark. 1903). No individual acquires any title to any wild animal until he reduces it to lawful possession. Krenz v. Nichols, 222 N.W. 300, 303 (Wis. 1928); Geer v. Connecticut, 161 U.S. 519, 529 (1896).

Thus it is clear that the wild deer now enclosed by Big Horn's fence are the property of the people of the State of Montana; that they are subject to regulation for the common good and for the protection of the animals; and that Big Horn can acquire no ownership interest therein except in compliance with law. The game farm statutes provide no such method for acquiring ownership and, in fact, mandate that wild and privately-owned animals not be allowed to mingle. (87-4-401.)

Thus Big Horn and its owners and guests will encounter a quandry if Big Horn introduces privately-owned deer onto the farm for purposes of hunting them. As long as the only animals that are killed are privately-owned, no problems arise. However, if one of the confined wild deer is killed, the hunter must be in compliance with applicable license, season and bag limits or risk prosecution.

Several alternatives are open. First, all deer hunting on the farm could be done in compliance with state law. Then the successful hunter could shoot either a private or a wild deer. Second, the privately-owned deer could be conspicuously marked or banded so that a hunter could easily distinguish them. These deer could be hunted by Big Horn as it saw fit. This alternative would work the first year, but thereafter a question would arise as to the ownership of offspring which might be the offspring of a wild deer and a privately-owned one. It would be impossible to determine the parentage. Third, Big Horn could refrain from introducing privately-owned deer onto the farm until the wild population had been removed by hunting in compliance with state law or otherwise. Removal of the wild deer has been attempted to some extent already. It should be noted in this regard that nowhere has there been found any support for the propositon that when a game farm permittee encloses an area of land with a game-proof fence, the burden is upon the state to do whatever is necessary to remove the wild game animals. The department can and should cooperate in any reasonable way possible by scheduling special seasons, or by live trapping and transplanting where the terrain and the department's budget and personnel limitations will allow. In large areas containing rugged terrain, an immediate removal requirement would be practically impossible for the department to fulfill. The benefits from the farm itself and from the game farm statutes flow primarily to Big Horn. If a removal requirement is to be imposed upon the department, it is the Legislature that must do so. There likewise will probably always be some lingering doubt as to whether all wild animals had been removed both because of the size and terrain of the area involved, and because of the possibility of breaks in the fence which would allow wild animals into the enclosure. Reasonable satisfaction by the department that all wild game animals have been removed is the most that can be workable.

Another cooperative alternative could involve an agreement between the department and Big Horn as to how many wild deer were entrapped on the farm. Big Horn could agree to never reduce the herd below this number. Thereafter the "wild herd" base figure could be periodically reduced by hunting in compliance with state law or by trapping and transplanting.

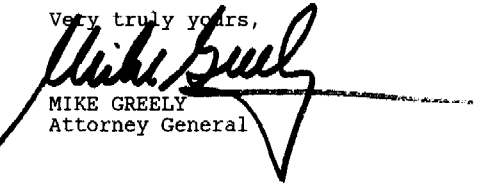
The selection of one of these alternatives, or of another, is upon the permittee. The wild game animals existed upon

the land long before the existence of the farm, and Big Horn had actual and constructive knowledge of this fact before the fence was erected. It is the responsibility of Big Horn, or its client hunters or both, to take whatever steps are necessary to insure that wild game animals on the farm are taken only in compliance with state law, or that they are removed or not taken at all.

THEREFORE, IT IS MY OPINION:

Where the fence of a game farm permittee under 87-4-401 et seq., MCA, encloses native wild big game animals, these animals remain the property of the state and may be hunted and taken only in compliance with state law. The state has no responsibility to remove the wild game animals from the enclosure.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 69

ADMINISTRATIVE PROCEDURE - Requirement for hearing on change of Department of Livestock policy;
LIVESTOCK - Responsibility of Department of Livestock in registering security interest in livestock;
SECURED TRANSACTIONS - Identification of security interests in livestock;
MONTANA CODE ANNOTATED - 2-3-104(2), 2-4-302(2),(4), 2-4-305(1), 2-4-306(2), 81-1-102, 81-8-301;
MONTANA CONSTITUTION - Article II, section 8, 1972.

HELD: 1. The Department of Livestock may adopt a new policy interpreting its responsibilities under section 81-8-301, MCA.

2. This policy need not provide the markets with tally sheets giving the state of title of individual animals or groups of animals.

3. In adopting a new policy, the department must comply with the Montana Administrative Procedure Act.

28 February 1980

Les Graham, Administrator
Brands Enforcement Division
Department of Livestock
State Capitol
Helena, Montana 59601

Dear Mr. Graham:

You have requested my opinion regarding the duties of the Department of Livestock (hereafter "the department") under section 81-8-301, MCA, which provides:

> Notice of security agreements. The Department of Livestock shall accept and file notices of security agreements, renewals, assignments, and satisfactions covering livestock owned by a person, firm, corporation, or association and bearing its recorded brand and shall list the notices on the official records of marks and brands kept by it. The department shall also list

> the notices in the offices of the stock inspectors employed by the department and stationed at the central livestock markets where records are kept of marks and brands. All forms on which notices are given shall be prescribed by the department and furnished by the secured party who gives the notice. A livestock market to which livestock is shipped may not be held liable to any secured party for the proceeds of livestock sold through the livestock market by the debtor unless notice of the security interest is filed as hereinbefore provided.

Pursuant to this statute, the department has established a system whereby a list of security interests filed against branded livestock is compiled and sent weekly to the stock inspectors at major livestock market centers. The stock inspectors then index the security interests by brand. When livestock are sold, a "tally sheet" is prepared by the stock inspector. The inspector compares the brand of the cattle sold with his record of security interest and states on the tally sheet whether the proceeds of the sale should be paid to the seller alone or to the seller and a secured party jointly. This policy has been in effect since the enactment of the predecessor to section 81-8-301, MCA, in 1935.

Your letter informs me that the department has recently learned that it may be exposing itself to liability in cases where livestock markets rely on information provided in the tally sheets which turns out to be erroneous. The department therefore wishes to alter its policy by providing indexed information and tally sheets only to those markets which execute an agreement exonerating the department from liability for errors in the information. You raise three questions:

1. May the department alter a policy which it has adhered to for over forty years?

2. Does section 81-8-301, MCA, require the department to give markets actual notice of the existence of security interests in branded livestock through indexes and tally sheets?

3. If the policy may be altered, what procedures must be followed in adopting a new policy?

In response to your first inquiry, I am aware of no statutory or constitutional impediment to the adoption of a new policy, provided the policy adopted conforms to the statute. An agency which performs gratuitous services does not, with the passage of time, incur a legal obligation to continue to do so, absent the applicability of estoppel principles to specific cases. If the provision of indexes and tally sheets was not statutorily required, the fact that the department had provided them for forty years does not create a legal duty to continue to do so. I conclude that the department may substitute for the present policy a properly adopted policy which complies with the department's statutory duty.

The department's duties under section 81-8-301, MCA, are basically two-fold. The first sentence of the statute requires the department to record security interests in livestock on its official records of marks and brands. The proposed policy will make no change in current practice in this area. The second sentence of the section requires the department to "list the notices in the offices of the stock inspectors employed by the department and stationed at the central livestock markets where records are kept of marks and brands." In my opinion, this second statutory duty is satisfied if the department requires stock inspectors to provide the market with records from which the existence of a security interest in cattle bearing a particular brand may readily be determined. In Montana Meat Co. v. Missoula Livestock Auction Co., 125 Mont. 66, 230 P.2d 955 (1951), the Montana Supreme Court discussed the nature of the procedure of gaining notice of security interest in livestock under the predecessor to section 81-8-301, MCA. The Court noted that livestock markets are highly regulated at both the federal and state levels, and that this regulation inhibits their ability to investigate title to the livestock they sell. The legislature provided section 81-8-301, MCA, as a means of making less onerous the burden of the livestock markets. The Legislature did not, however, require the department to act as an insurer of title to livestock. Rather, the intent of the legislation was to provide a clearing house at each major market where title information on branded livestock would be readily available. Clearly, the statute does not require the department to evaluate the title of each animal sold and certify its title status to the market. The department's statutory duty is to "list the notices." In my opinion this duty is fulfilled if it provides the markets with access to title information in usable form.

The department must provide constructive notice of title. The question of whether this requirement may be met without indexing the material at the office of the local stock inspector depends on whether the unindexed material is sufficient to allow the market with reasonable effort to ascertain the state of title of the cattle sold.

Since this question is one of fact, I express no opinion. The determination as to what steps are necessary to give adequate constructive notice is within the particular expertise of your department, and within the department's rulemaking authority under section 81-1-102, MCA.

Your final inquiry concerns the procedures which must be followed in adopting a new policy in this area. Article II, section 8 of the 1972 Montana Constitution affords citizens of this state the right to "reasonable opportunity for citizen participation" in affairs of government. The Montana Administrative Procedure Act fulfills this constitutional mandate in the context of a rulemaking proceeding by providing for notice and hearing. See section 2-3-104(2), MCA. The procedures for rulemaking are set forth in Title 2, chapter 4, part 3, MCA. Briefly, the rulemaking agency is required to publish notice in the Montana Administrative Register of its intention to promulgate a rule on a particular subject. Section 2-4-302(2), MCA. Interested parties must be afforded the opportunity to testify or present in writing their views on the proposed rule. Section 2-4-302(4). The agency must consider the evidence presented and adopt or reject the proposed rule, stating the reasons for its action. Section 2-4-305(1), MCA. An adopted rule must then be filed with the Secretary of State. Section 2-4-306(2), MCA. This brief overview is not an exhaustive analysis of the department's duties in a rulemaking proceeding. However, the statutes explicitly set forth the steps which must be taken. See, J. McCrory, Administrative Procedures in Montana: A View After Four Years With The Montana Administrative Procedure Act, 38 Mont. L. Rev. 1 (1977).

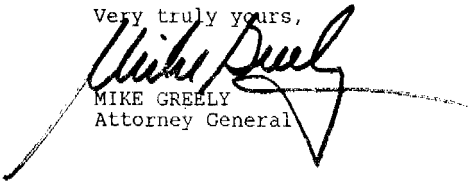
THEREFORE, IT IS MY OPINION:

1. The Department of Livestock may adopt a new policy interpreting its responsibilities under section 81-8-301, MCA.

2. This policy need not provide the markets with tally sheets giving the state of title of individual animals or groups of animals.

3. In adopting a new policy, the department must comply with the Montana Administrative Procedure Act.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 70

SALARIES - Effective date of pay matrix for state employees in new fiscal year;
SICK LEAVE - Computation of compensation for unused sick leave for employees terminated on June 30, 1979;
VACATION - Computation of compensation for unused sick leave for employees terminatd on June 30, 1979;
MONTANA CODE ANNOTATED - Sections 2-18-303, 2-18-311, 2-18-312, 2-18-617(2) and 2-18-618(5).

HELD: 1. The State Central Payroll Division may apply the pay matrix for fiscal 1980 in issuing pay checks covering the pay period from June 30, 1979 to July 13, 1979, inclusive.

2. A state agency with a monthly payroll may apply the new pay matrix to the pay period beginning June 30, 1979.

3. Sick or annual leave for employees terminated as laid off on June 30, 1979 should be computed on the basis of the pay matrix in effect on that date.

4. The first pay period of fiscal year 1981 begins June 29, 1980.

3 March 1980

E. V. "Sonny" Omholt
State Auditor
Mitchell Building
Helena, Montana 59601

David M. Lewis, Director
Department of Administration
Mitchell Building
Helena, Montana 59601

Dear Sirs:

You have requested my opinion on four interrelated questions concerning the effective date of pay increases for state employees. Your questions are as follows:

1. May the State Central Payroll Division apply the pay matrix for fiscal 1980 in issuing pay checks covering the pay period from June 30, 1979 to July 13, 1979, inclusive?

2. May state agencies with a monthly payroll apply the new pay matrix to the pay period beginning June 30, 1979?

3. Which pay matrix applies to compute compensation for unused sick and annual leave for employees terminated or laid off on June 30, 1979?

4. On what date does the first pay period of fiscal 1981 begin?

The pay matrices provided in sections 2-18-311 and 2-18-312, MCA, establish the annual compensation for the fiscal years ending June 30, 1980 and June 30, 1981 respectively. Section 2-18-303(1),(2), MCA. The pay matrices generally reflect increases in annual salary for each corresponding grade and step. For example, an employee at Grade 1, Step 1 receives compensation of $5,892 under the fiscal year 1980 matrix set forth in section 2-18-311, MCA, while he or she would receive $6,412 under the matrix for fiscal year 1981 set forth in section 2-18-312, MCA, exclusive of seniority step increases or other salary adjustments.

Your questions deal with the effective date of the salary increases incurred when the payroll is shifted from one matrix to another. Section 2-18-303(1)(d) provides:

> (i) The compensation of each employee on the first day of the first pay period in fiscal year 1980 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1979.
>
> (ii) The compensation of each employee on the first day of the first pay period in fiscal year 1981 shall be that amount which corresponds to the grade and step occupied on the last day of fiscal year 1980.
>
> (iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix each fiscal year. However, if the employee's anniversary date falls between (inclusive)

> July 1 and the first day of the first pay period of fiscal year 1980 or 1981, as the case may be, he will advance one step on the first day of that pay period.

Under this provision, the new pay matrix becomes effective on "the first day of the first pay period in" the fiscal year. Fiscal year 1980 began on July 1, 1979. A state pay period began on June 30, 1979 and ended on July 13, 1979. The answer to your questions depends upon whether "the first pay period in fiscal year 1980" began on June 30, 1979, before the beginning of fiscal year 1980, or on July 13, 1979, some twelve days after the beginning of the fiscal year.

Your opinion request informs me that the State Auditor and the Department of Administration have taken the position that the phrase "the first pay period in" a fiscal year means the first pay period any part of which lies within the fiscal year. Thus, it is your position that the pay matrix for fiscal year 1980 should be put into effect on June 30, 1979, before the beginning of the fiscal year.

The language of the statute gives no guidance on this question. Subsection (iii) of section 2-18-303(1)(d) provides that an employee whose anniversary date "falls between (inclusive) July 1 and the first day of the first pay period in [the fiscal year]" receives his step increase effective the first day of the first pay period. This section could be read to require the first day of the first pay period in a fiscal year to fall after July 1. However, it can also be construed to permit the first day of the first pay period to fall prior to July 1.

The Department of Administration is charged with the responsibility for administering the pay program "on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able." Section 2-18-301(3), MCA. I find nothing in the department's interpretation which is inconsistent with these statutory goals. "When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration." Department of Revenue v. Puget Sound Power and Light Co., ___ Mont. ___, 587 P.2d 1282, 1286 (1978). This is particularly true where ex post facto imposition of a different rule would likely cause public injury or inconvenience. Murray Hospital v. Angrove, 92 Mont. 101, 117-

118, 10 P.2d 577 (1932). Here, the ramifications of an alteration in payroll policy followed since 1977 are uncertain. The policy is not contrary to the enabling legislation, and I therefore conclude that it is permissible under the statute.

The responses to your inquiries flow directly from this conclusion. Following the above policy, the State Central Payroll Division could properly apply the pay matrix for fiscal year 1980 to the pay period beginning June 30, 1979. The same policy should apply to agencies on a monthly payroll. An employee who terminated service on that date would receive compensation for unused sick and vacation leave based on their salary on the date of termination, which is determined under the Department's policy by reference to the fiscal 1980 pay matrix. See sections 2-18-617(2), 2-18-618(5), MCA. Finally, application of the policy to fiscal year 1981 would permit the use of the pay matrix for that fiscal year for the pay period beginning June 29, 1980.

THEREFORE, IT IS MY OPINION:

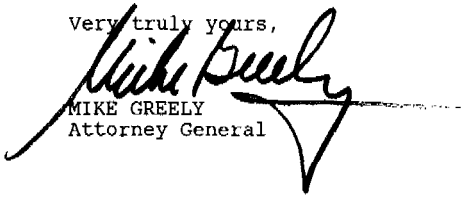
1. The State Central Payroll Division may apply the pay matrix for fiscal 1980 in issuing pay checks covering the pay period from June 30, 1979 to July 13, 1979, inclusive.

2. A state agency with a monthly payroll may apply the new pay matrix to the pay period beginning June 30, 1979.

3. Sick or annual leave for employees terminated as laid off on June 30, 1979 should be computed on the basis of the pay matrix in effect on that date.

4. The first pay period of fiscal year 1981 begins June 29, 1980.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 71

LEGISLATURE - Priority of legislative enactments;
LEGISLATIVE BILLS - Amendment and repeal of same statute;
LEGISLATIVE BILLS - Amendment of an act repealed is void.
LAWS OF MONTANA, 1979 - Chapters 686, 693, 706, and 712.

HELD: The 1979 amendments to sections 15-6-102 through 15-6-121, MCA, are void by virtue of the repeal of those sections by chapter 693, Laws of Montana, 1979.

28 February 1980

Mary L. Craig, Director
Department of Revenue
S.W. Mitchell Building
Helena, Montana 59601

Dear Ms. Craig:

You have requested my opinion regarding the legal effect of amendments to certain sections of the Montana Code made by chapters 686, 706, and 712, Laws of Montana, 1979, in light of the repeal of those same sections by chapter 693, Laws of Montana, 1979.

Chapter 693 was an act to generally revise the property tax classification system. The prior 20 classes of property were reorganized into 10 classes. This was accomplished by repealing sections 15-6-102, through 15-6-121, MCA, and enacting 10 new sections, now codified as 15-6-131 through 15-6-140, MCA.

Chapter 686, Laws of Montana, 1979, was an act relating to the taxation of property owned by centrally assessed companies, and amended sections 15-6-108, 15-6-111 and 15-6-115, MCA. Chapter 686 provided for coordination with House Bill 213, subsequently adopted and signed by the Governor as chapter 693, Laws of Montana, 1979. However, sections 7 and 10 of chapter 693 (now codified as 15-6-137 and 15-6-140, MCA) were not coordinated with chapter 686, and certain properties of centrally assessed companies were thus placed in two classes. For example, electric transformers are Class 7 property under chapter 693 and Class 11 property under chapter 686. The taxable values under these two classes differ.

Chapter 706, Laws of Montana, 1979, rewrote section 15-6-116, MCA, increasing the levels of permissible adjusted gross income and providing for a graduated tax based on adjusted gross income. Chapter 693 repealed section 15-6-116, MCA, and in its place enacted section 15-6-134(1)(d) and (2)(b), MCA. The language of chapter 693 did not provide for an increase of adjusted gross income or for a graduated tax.

Chapter 712, Laws of Montana, 1979, provided for the imposition of a fee in lieu of property tax on motor homes, travel trailers, snowmobiles, and campers. Chapter 712 amended section 15-6-110 and 15-6-111, MCA, to delete references to these types of property. Chapter 693, Laws of 1979, repealed sections 15-6-110 and 15-6-111, MCA, and enacted sections 15-6-135, 15-6-138, 15-6-139, and 15-6-141, MCA, which contain references to motor homes, travel trailers, snowmobiles, and campers. Consequently these types of property could be subject to a property tax as well as a fee.

The Code Commissioner has not codified the amendments to the sections repealed by chapter 693, but rather has given effect to the repealers. See, e.g., Compiler's Comments to sections 15-6-134--135, MCA, wherein the compiler construed the amendments to be "technically void." The Revenue Oversight Committee has passed a series of resolutions suggesting that the sections be construed together.

Although in some jurisdictions the courts will recognize the mistakes of a legislature in amending a repealed section and try to give effect to its intent, a minority of jurisdictions hold that an attempted amendment to a repealed act is ineffective. IA Sutherland Statutory Construction § 22.03 (4th ed. 1972). Montana follows the minority position. The state Supreme Court has on several occasions held the amendment of a repealed section ineffectual. Dept. of Revenue v. B.N., 169 Mont. 202, 209 (1976); State v. Brennan, 89 Mont. 479, 486 (1931); In re Naegele, 70 Mont. 129, 136 (1924); In re Terrett, 34 Mont. 325, 332 (1906). Furthermore, section 1-2-204, MCA, provides: "An act amending a section of an act repealed is void."

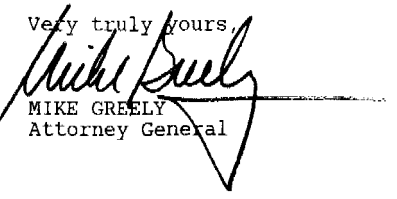
In certain instances the court has used an amendment to a repealed section to determine legislative intent, see Dept. of Revenue v. B.N., supra. Subsequent resolutions passed by an interim committee, such as the Revenue Oversight Committee, could also, on occasion, be used to garner legislative intent. However, where the legislative enact-

ment is clear and unambiguous, the language of the act itself must be followed. A cardinal principle of statutory construction is that the intent of the legislature must first be determined from the plain meaning of the words used, and if interpretation be so determined, the courts may not go further and apply any other means of interpretation. Keller v. Smith, 170 Mont. 399, 553 P.2d 1002 (1976); Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). Here, the language of chapter 693 is clear, and unambiguous and conflicts in significant respects with the language of the other chapters.

THEREFORE, IT IS MY OPINION:

The 1979 amendments to sections 15-6-102 through 15-6-121, MCA, are void by virtue of the repeal of those sections by chapter 693, Laws of Montana, 1979.

Very truly yours,



MIKE GREELY
Attorney General