

## HOUSE BILL NO. 470

INTRODUCED BY CLARK, HARRIS, FUREY, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING APPLICANTS TO PAY COSTS AND FEES FOR PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS; AMENDING SECTIONS 75-1-202, 75-1-205, 75-1-207, ~~75-1-220~~, 75-1-208, 75-2-104, 75-2-211, 75-10-922, ~~75-10-929~~, 75-20-201, 75-20-216, ~~75-20-304~~, 75-20-401, 75-20-406, 76-4-125, 82-4-122, 82-4-231, 82-4-337, 82-4-349, 82-4-427, 82-4-436, 85-2-124, AND 85-2-310, MCA; ~~REPEALING SECTIONS 75-1-202, 75-1-203, AND 75-1-204, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**SECTION 1. SECTION 75-1-202, MCA, IS AMENDED TO READ:**

**"75-1-202. Agency rules to prescribe fees.** Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees ~~which shall~~ that must be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201 and the agency has not made the finding under 75-1-205(1)(a). An agency ~~must shall~~ determine ~~within 30 days after a completed application is filed~~ whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this ~~part~~ section within any statutory timeframe for issuance of the lease, permit, contract, license, or certificate or, if no statutory timeframe is provided, within 90 days. ~~The~~ Except as provided in 85-2-124, the fee assessed under this part section shall may be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. ~~No~~ A fee may not be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment."

**Section 2.** Section 75-1-205, MCA, is amended to read:

**"75-1-205. Use Collection and use of fees AND COSTS.** (1) A person who applies to a state agency for a permit, license, or other authorization that the agency determines requires preparation of an environmental

1 impact statement is responsible for paying:

2 (A) the agency's costs of preparing the environmental impact statement and conducting the  
 3 environmental impact statement process IF THE AGENCY MAKES A WRITTEN DETERMINATION, BASED ON MATERIAL  
 4 EVIDENCE IDENTIFIED IN THE DETERMINATION, THAT THERE WILL BE A SIGNIFICANT ENVIRONMENTAL IMPACT OR A  
 5 POTENTIAL FOR A SIGNIFICANT ENVIRONMENTAL IMPACT; OR

6 (B) A FEE AS PROVIDED IN 75-1-202 IF THE AGENCY DOES NOT MAKE THE DETERMINATION PROVIDED FOR IN  
 7 SUBSECTION (1)(A).

8 (2) Costs payable under subsection (1) include:

9 (a) the costs of generating, gathering, and compiling data and information that is not available from the  
 10 applicant to prepare the draft environmental impact statement, any supplemental draft environmental impact  
 11 statement, and the final environmental impact statement;

12 (b) the costs of writing, reviewing, editing, printing, and distributing A REASONABLE NUMBER OF COPIES OF  
 13 the draft environmental impact statement;

14 (c) the costs of attending meetings and hearings on the environmental impact statement, including  
 15 meetings and hearings held to determine the scope of the environmental impact statement; and

16 (d) the costs of preparing, printing, and distributing A REASONABLE NUMBER OF COPIES OF any  
 17 supplemental draft environmental impact statement and the final environmental impact statement, including the  
 18 cost of reviewing and preparing responses to public comment.

19 (3) Costs payable under subsection (1) include:

20 (A) payments to contractors hired to work on the environmental impact statement and;

21 (B) salaries and expenses of AN agency employees EMPLOYEE WHO IS DESIGNATED AS THE AGENCY'S  
 22 COORDINATOR FOR PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT for time spent performing the activities  
 23 described in subsection (2) or for managing those activities; AND

24 (C) TRAVEL AND PER DIEM EXPENSES FOR OTHER AGENCY PERSONNEL FOR ATTENDANCE AT MEETINGS AND  
 25 HEARINGS ON THE ENVIRONMENTAL IMPACT STATEMENT.

26 ~~\_\_\_\_\_ (4) The agency may not initiate work on the environmental impact statement until the applicant has paid~~  
 27 ~~the estimated cost of completing the environmental impact statement, as determined by the agency.~~

28 ~~\_\_\_\_\_ (5) Upon completion of the environmental impact statement process, the applicant shall pay the~~  
 29 ~~department any costs described in subsections (2) and (3) that exceed the estimated cost. The agency may~~  
 30 ~~not issue the permit, license, or other authorization until the applicant pays the costs.~~

1           (4) (A) WHENEVER THE AGENCY MAKES THE DETERMINATION IN SUBSECTION (1)(A), IT SHALL NOTIFY THE  
2 APPLICANT OF THE COST OF CONDUCTING THE PROCESS TO DETERMINE THE SCOPE OF THE ENVIRONMENTAL IMPACT  
3 STATEMENT. THE APPLICANT SHALL PAY THAT COST, AND THE AGENCY SHALL THEN CONDUCT THE SCOPING PROCESS.  
4 THE TIMEFRAME IN 75-1-208(4)(A)(I) AND ANY STATUTORY TIMEFRAME FOR A DECISION ON THE APPLICATION ARE TOLLED  
5 UNTIL THE APPLICANT PAYS THE COST OF THE SCOPING PROCESS.

6           (B) IF THE AGENCY DECIDES TO HIRE A THIRD-PARTY CONTRACTOR TO PREPARE THE ENVIRONMENTAL IMPACT  
7 STATEMENT, THE AGENCY SHALL PREPARE A LIST OF NO FEWER THAN FOUR CONTRACTORS ACCEPTABLE TO THE AGENCY  
8 AND SHALL PROVIDE THE APPLICANT WITH A COPY OF THE LIST. IF FEWER THAN FOUR ACCEPTABLE CONTRACTORS ARE  
9 AVAILABLE, THE AGENCY SHALL INCLUDE ALL ACCEPTABLE CONTRACTORS ON THE LIST. THE APPLICANT SHALL PROVIDE  
10 THE AGENCY WITH A LIST OF AT LEAST 50% OF THE CONTRACTORS FROM THE AGENCY'S LIST. THE AGENCY SHALL SELECT  
11 ITS CONTRACTOR FROM THE LIST PROVIDED BY THE APPLICANT.

12           (C) UPON COMPLETION OF THE SCOPING PROCESS AND SUBJECT TO SUBSECTION (1)(D), THE AGENCY AND THE  
13 APPLICANT SHALL NEGOTIATE AN AGREEMENT FOR THE PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT. THE  
14 AGREEMENT MUST PROVIDE THAT:

15           (I) THE APPLICANT SHALL PAY THE COST OF THE ENVIRONMENTAL IMPACT STATEMENT AS DETERMINED BY THE  
16 AGENCY AFTER CONSULTATION WITH THE APPLICANT. IN DETERMINING THE COST, THE AGENCY SHALL IDENTIFY AND  
17 CONSULT WITH THE APPLICANT REGARDING THE DATA AND INFORMATION THAT MUST BE GATHERED AND STUDIES THAT  
18 MUST BE CONDUCTED.

19           (II) THE AGENCY SHALL PREPARE THE ENVIRONMENTAL IMPACT STATEMENT WITHIN A REASONABLE TIME  
20 DETERMINED BY THE AGENCY AFTER CONSULTATION WITH THE APPLICANT AND SET OUT IN THE AGREEMENT. THIS  
21 TIMEFRAME SUPERSEDES ANY TIMEFRAME IN STATUTE OR RULE. IF THE APPLICANT AND THE AGENCY CANNOT AGREE ON  
22 A TIMEFRAME, THE AGENCY SHALL PREPARE THE ENVIRONMENTAL IMPACT STATEMENT WITHIN ANY TIMEFRAME PROVIDED  
23 BY STATUTE OR RULE.

24           (III) THE APPLICANT SHALL MAKE PERIODIC ADVANCE PAYMENTS TO COVER WORK TO BE PERFORMED;

25           (IV) THE AGENCY MAY ORDER WORK ON THE ENVIRONMENTAL IMPACT STATEMENT TO STOP IF THE APPLICANT  
26 FAILS TO MAKE ADVANCE PAYMENT AS REQUIRED BY THE AGREEMENT. THE TIME FOR PREPARATION OF THE  
27 ENVIRONMENTAL IMPACT STATEMENT IS TOLLED FOR ANY PERIOD DURING WHICH A STOP-WORK ORDER IS IN EFFECT FOR  
28 FAILURE TO MAKE ADVANCE PAYMENT.

29           (V) (A) IF THE AGENCY DETERMINES THAT THE ACTUAL COST OF PREPARING THE ENVIRONMENTAL IMPACT  
30 STATEMENT WILL EXCEED THE COST SET OUT IN THE AGREEMENT OR THAT MORE TIME IS NECESSARY TO PREPARE THE

1 ENVIRONMENTAL IMPACT STATEMENT, THE AGENCY SHALL SUBMIT PROPOSED MODIFICATIONS TO THE AGREEMENT TO THE  
 2 APPLICANT:

3 (B) IF THE APPLICANT DOES NOT AGREE TO AN EXTENSION OF THE TIME FOR PREPARATION OF THE  
 4 ENVIRONMENTAL IMPACT STATEMENT, THE AGENCY MAY INITIATE THE INFORMAL REVIEW PROCESS UNDER SUBSECTION  
 5 (4)(D). UPON COMPLETION OF THE INFORMAL REVIEW PROCESS, THE AGREEMENT MAY BE AMENDED ONLY WITH THE  
 6 CONSENT OF THE APPLICANT.

7 (C) IF THE APPLICANT DOES NOT AGREE WITH THE INCREASED COSTS PROPOSED BY THE AGENCY, THE  
 8 APPLICANT MAY REFUSE TO AGREE TO THE MODIFICATION AND MAY ALSO PROVIDE THE AGENCY WITH A WRITTEN  
 9 STATEMENT PROVIDING THE REASON THAT PAYMENT OF THE INCREASED COST IS NOT JUSTIFIED OR, IF APPLICABLE, THE  
 10 REASON THAT A PORTION OF THE INCREASED COST IS NOT JUSTIFIED. THE APPLICANT MAY ALSO REQUEST AN INFORMAL  
 11 REVIEW AS PROVIDED IN SUBSECTION (4)(D). IF THE APPLICANT PROVIDES A WRITTEN STATEMENT PURSUANT TO THIS  
 12 SUBSECTION (4)(C)(V)(C), THE AGREEMENT MUST BE AMENDED TO REQUIRE THE APPLICANT TO PAY ALL UNDISPUTED  
 13 INCREASED COST AND 75% OF THE DISPUTED INCREASED COST AND TO PROVIDE THAT THE AGENCY IS RESPONSIBLE FOR  
 14 25% OF THE DISPUTED INCREASED COST. IF THE APPLICANT DOES NOT PROVIDE THE STATEMENT, THE AGREEMENT MUST  
 15 BE AMENDED TO REQUIRE THE APPLICANT TO PAY ALL INCREASED COSTS.

16 (D) IF THE APPLICANT DOES NOT AGREE WITH COSTS DETERMINED UNDER SUBSECTION (4)(C)(I) OR PROPOSED  
 17 UNDER SUBSECTION (4)(C)(V), THE APPLICANT MAY INITIATE THE INFORMAL REVIEW PROCESS PURSUANT TO 75-1-208(3).  
 18 IF THE APPLICANT DOES NOT AGREE TO A TIME EXTENSION PROPOSED BY THE AGENCY UNDER SUBSECTION (4)(C)(V), THE  
 19 AGENCY MAY INITIATE AN INFORMAL REVIEW BY AN APPROPRIATE BOARD UNDER 75-1-208(3). THE PERIOD OF TIME FOR  
 20 COMPLETION OF THE ENVIRONMENTAL IMPACT STATEMENT PROVIDED IN THE AGREEMENT IS TOLLED FROM THE DATE OF  
 21 SUBMISSION OF A REQUEST FOR A REVIEW BY THE APPROPRIATE BOARD UNTIL THE DATE OF COMPLETION OF THE REVIEW  
 22 BY THE APPROPRIATE BOARD. HOWEVER, THE AGENCY SHALL CONTINUE TO WORK ON PREPARATION OF THE  
 23 ENVIRONMENTAL IMPACT STATEMENT DURING THIS PERIOD IF THE APPLICANT HAS ADVANCED MONEY TO PAY FOR THIS  
 24 WORK.

25 (6)(5) All fees AND COSTS collected under this part shall must be deposited in the state special revenue  
 26 fund as provided in 17-2-102. All fees AND COSTS paid pursuant to this part shall must be used as herein provided  
 27 in this part. Upon completion of the necessary work, each agency will shall make an accounting to the applicant  
 28 of the funds expended and refund all unexpended funds without interest."

29

30 **Section 3.** Section 75-1-207, MCA, is amended to read:

1           **"75-1-207. Major facility siting applications excepted.** (1) Except as provided in subsection (2), a  
 2 ~~No~~ fee as prescribed by this part may not be assessed against any person, corporation, partnership, firm,  
 3 association, or other private entity filing an application for a certificate under the provisions of the Montana Major  
 4 Facility Siting Act, Title 75, chapter 20 of this title.

5           (2) The department of environmental quality may require payment of costs under 75-1-205  
 6 75-1-205(1)(A) by a person who files a petition under 75-20-201(5)."

7  
 8 ~~Section 3.~~ Section 75-1-220, MCA, is amended to read:

9 ~~"75-1-220. Definitions.~~ For the purposes of this part, the following definitions apply:

10 ~~(1) "Appropriate board" means, for administrative actions taken under this part by the:~~

11 ~~(a) department of environmental quality, the board of environmental review, as provided for in~~  
 12 ~~2-15-3502;~~

13 ~~(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in~~  
 14 ~~2-15-3402;~~

15 ~~(c) department of transportation, the transportation commission, as provided for in 2-15-2502;~~

16 ~~(d) department of natural resources and conservation for state trust land issues, the board of land~~  
 17 ~~commissioners, as provided for in Article X, section 4, of the Montana constitution;~~

18 ~~(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas~~  
 19 ~~conservation, as provided for in 2-15-3303; and~~

20 ~~(f) department of livestock, the board of livestock, as provided for in 2-15-3102.~~

21 ~~(2) "Complete application" means, for the purpose of complying with this part, an application for a~~  
 22 ~~permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and~~  
 23 ~~signatures required to be included with the application sufficient for the agency to approve the application under~~  
 24 ~~the applicable statutes and rules and for which the applicant has paid any estimated cost pursuant to 75-1-205.~~

25 ~~(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed~~  
 26 ~~action when considered in conjunction with other past, present, and future actions related to the proposed action~~  
 27 ~~by location or generic type.~~

28 ~~(4) "Environmental review" means any environmental assessment, environmental impact statement,~~  
 29 ~~or other written analysis required under this part by a state agency of a proposed action to determine, examine,~~  
 30 ~~or document the effects and impacts of the proposed action on the quality of the human and physical~~

1 ~~environment as required under this part.~~

2 ~~——— (5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing~~  
 3 ~~an action that requires an environmental review. If the action involves state agency-initiated actions on state trust~~  
 4 ~~lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of~~  
 5 ~~congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through~~  
 6 ~~308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328).~~

7 ~~——— (6) "Public scoping process" means any process to determine the scope of an environmental review."~~

8

9 **SECTION 4. SECTION 75-1-208, MCA, IS AMENDED TO READ:**

10 **"75-1-208. Environmental review procedure.** (1) (a) Except as provided in 75-1-205(4) and  
 11 subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental  
 12 review required under this part.

13 (b) To the extent that the requirements of this section are inconsistent with federal requirements, the  
 14 requirements of this section do not apply to an environmental review that is being prepared jointly by a state  
 15 agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an  
 16 environmental review that must comply with the requirements of the National Environmental Policy Act.

17 (2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality  
 18 council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of  
 19 the project. The environmental quality council shall ensure that the appropriate agency personnel are available  
 20 to answer questions.

21 (3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the  
 22 agency regarding an environmental review, the project sponsor may submit a written request to the agency  
 23 director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow  
 24 the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director,  
 25 the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the  
 26 remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency  
 27 and the board to prepare for the meeting.

28 (4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental  
 29 review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are  
 30 provided by law. All time limits are measured from the date the agency receives a complete application. An

1 agency has:

2 (i) 60 days to complete a public scoping process, if any;

3 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to  
4 75-1-201(1)(b)(iv) or 75-1-205(4), is required; and

5 (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

6 (b) The period of time between the request for a review by a board and the completion of a review by  
7 a board under 75-1-201(1)(b)(iv)(C)(III) or (8) or subsection (10) of this section may not be included for the  
8 purposes of determining compliance with the time limits established for conducting an environmental review  
9 under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216,  
10 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

11 (5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing  
12 that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one  
13 time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one  
14 extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree  
15 to the extension.

16 (6) If the project sponsor disagrees with the need for the extension, the project sponsor may request  
17 that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The  
18 appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

19 (7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental  
20 review by the expiration of the original or extended time period, the agency may not withhold a permit or other  
21 authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other  
22 approval to act would result in the violation of a statutory or regulatory requirement.

23 (b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82,  
24 chapter 4, parts 1 and 2.

25 (8) Under this part, an agency may only request that information from the project sponsor that is relevant  
26 to the environmental review required under this part.

27 (9) An agency shall ensure that the notification for any public scoping process associated with an  
28 environmental review conducted by the agency is presented in an objective and neutral manner and that the  
29 notification does not speculate on the potential impacts of the project.

30 (10) An agency may not require the project sponsor to provide engineering designs in greater detail than

1 that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate  
2 board, if any, review an agency's request regarding the level of design detail information that the agency  
3 believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit  
4 an advisory recommendation to the agency regarding the issue.

5 (11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project.  
6 However, related future actions may only be considered when these actions are under concurrent consideration  
7 by any agency through preimpact statement studies, separate impact statement evaluations, or permit  
8 processing procedures."

9

10 **Section 5.** Section 75-2-104, MCA, is amended to read:

11 **"75-2-104. Limitations -- personal cause of action unabridged -- venue.** (1) This chapter may not  
12 be construed to:

13 (a) grant to the board any jurisdiction or authority with respect to air contamination existing solely within  
14 commercial and industrial plants, works, or shops;

15 (b) affect the relations between employers and employees with respect to or arising out of any condition  
16 of air contamination or air pollution;

17 (c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health,  
18 or safety; or

19 (d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of  
20 a person to damages or other relief on account of injury to persons or property and to maintain an action or other  
21 appropriate proceeding.

22 (2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit  
23 applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by  
24 the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as  
25 determined ~~under 75-1-203~~ by the court, of more than \$1 million must have precedence over any civil cause  
26 of a different nature pending in that court. If the court determines that the challenge was without merit or was  
27 for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased  
28 cost in litigation, the court may award attorney fees and costs incurred in defending the action.

29 (3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in  
30 which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought

1 in any of the counties in which the activity will occur."

2

3 **Section 6.** Section 75-2-211, MCA, is amended to read:

4 **"75-2-211. (Temporary) Permits for construction, installation, alteration, or use.** (1) The board shall  
5 by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this  
6 part.

7 (2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction,  
8 installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the  
9 board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent  
10 or control the emission of air pollutants, the owner or operator shall file with the department the appropriate  
11 permit application on forms available from the department except as provided in subsection (12).

12 (3) The permit program administered by the department pursuant to this section must include the  
13 following:

14 (a) requirements and procedures for permit applications, including standard application forms;

15 (b) requirements and procedures for submittal of information necessary to determine the location,  
16 quantity, and type of emissions;

17 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

18 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
19 agencies, as appropriate;

20 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

21 (f) procedures for the transfer of permits;

22 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
23 department;

24 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
25 enforceable measures necessary to ensure compliance with those limitations and requirements;

26 (i) requirements and procedures for permit modification and amendment; and

27 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
28 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance  
29 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator  
30 notify the department in advance of each change in location.

1 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
2 quality permit system.

3 (5) Department approval of an application to transfer a portable emission source from one location to  
4 another is exempt from the provisions of 75-1-201(1).

5 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
6 appropriate applications.

7 (7) The department shall require that applications for permits be accompanied by any plans,  
8 specifications, and other information that it considers necessary.

9 (8) An application is not considered filed until the applicant has submitted all fees required under  
10 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
11 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
12 an application that the application is incomplete and fails to list the reasons why the application is considered  
13 incomplete, the application is considered filed as of the date of the purported filing. ~~At the time that the~~  
14 ~~department determines that an application is complete and if the department has determined that an~~  
15 ~~environmental impact statement is necessary, it shall notify the applicant of the estimated cost due pursuant to~~  
16 ~~75-1-205. If the department did not initially determine that an environmental impact statement was necessary~~  
17 ~~and later determines, after preparation of an environmental assessment, that preparation of an environmental~~  
18 ~~impact statement is necessary, it shall immediately notify the applicant of the estimated cost due pursuant to~~  
19 ~~75-1-205.~~

20 (9) (a) Except as provided in 75-1-205(4) AND 75-1-208(4)(b), if an application for a permit requires the  
21 preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter  
22 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the  
23 application within:

24 (i) ~~if the department prepares the environmental impact statement, within 180 days after the~~  
25 ~~department's receipt of a filed application, as provided in subsection (8), if the department prepares the~~  
26 ~~environmental impact statement; or the payment of the estimated cost pursuant to 75-1-205, whichever occurs~~  
27 ~~later. However, if the applicant is required by 75-1-205(5) to pay additional costs, the department may not issue~~  
28 ~~the permit until the applicant pays those costs. IF THE DEPARTMENT PREPARES THE ENVIRONMENTAL IMPACT~~  
29 ~~STATEMENT;~~

30 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state

1 agency other than the department has been designated by the governor as lead agency for preparation of the  
2 environmental impact statement; or

3 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
4 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact  
5 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

6 (b) If an application does not require the preparation of an environmental impact statement, is not  
7 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42  
8 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt  
9 of a filed application, as provided in subsection (8), of its approval or denial of the application.

10 (c) If an application does not require the preparation of an environmental impact statement and is  
11 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the  
12 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its  
13 approval or denial of the application.

14 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an  
15 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the  
16 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed  
17 application, as provided in subsection (8).

18 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that  
19 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
20 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required  
21 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications  
22 within the time period provided for in 75-2-215(3)(e).

23 (f) The time for notification may be extended for 30 days by written agreement of the department and  
24 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.  
25 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's  
26 agent.

27 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the  
28 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
29 the department to act in a timely manner.

30 (10) When the department approves or denies the application for a permit under this section, a person

1 who is jointly or severally adversely affected by the department's decision may request a hearing before the  
2 board. The request for hearing must be filed within 15 days after the department renders its decision and must  
3 include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana  
4 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this  
5 subsection.

6 (11) (a) The department's decision on the application is not final until 15 days have elapsed from the  
7 date of the decision.

8 (b) The filing of a request for hearing does not stay the department's decision. However, the board may  
9 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

- 10 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or  
11 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
12 requesting the stay.

13 (c) Upon granting a stay, the board may require a written undertaking to be given by the party  
14 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees  
15 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use  
16 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

17 (12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written  
18 notice that its application is considered filed pursuant to subsection (8) may:

19 (i) for a temporary power generation unit or units with a total electrical generation capacity of not more  
20 than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the  
21 department's issuance of a permit under this section.

22 (ii) for a temporary power generation unit or units with a total electrical generating capacity of 10  
23 megawatts or less, construct and operate the unit or units.

24 (b) The construction or operation of a temporary power generation unit or units described in subsection  
25 (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units  
26 continues after a department decision to deny the permit application becomes final as provided in this section.

27 (c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation  
28 unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the  
29 department's deadline any additional information that is necessary to process the permit application.

30 (ii) The operation of a permit applicant's temporary power generation unit or units described in

1 subsection (12)(a) may not violate ambient air quality standards.

2 (d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire  
3 no later than 2 years from the date that the department received the permit application and must require removal  
4 of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for  
5 permanent operation has been issued.

6 (13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on  
7 draft air quality permits for applications that:

8 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

9 (b) are subject to the requirements of 75-2-215; or

10 (c) require the preparation of an environmental impact statement.

11 (14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or  
12 creation of:

13 (i) general permits covering multiple similar sources; or

14 (ii) other permits covering multiple similar sources.

15 (b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the  
16 permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005--sec.  
17 4, Ch. 588, L. 2001.)

18 **75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use.** (1) The  
19 board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit  
20 issued under this part.

21 (2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction,  
22 installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the  
23 board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent  
24 or control the emission of air pollutants, the owner or operator shall file with the department the appropriate  
25 permit application on forms available from the department.

26 (3) The permit program administered by the department pursuant to this section must include the  
27 following:

28 (a) requirements and procedures for permit applications, including standard application forms;

29 (b) requirements and procedures for submittal of information necessary to determine the location,  
30 quantity, and type of emissions;

- 1 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- 2 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
3 agencies, as appropriate;
- 4 (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- 5 (f) procedures for the transfer of permits;
- 6 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
7 department;
- 8 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
9 enforceable measures necessary to ensure compliance with those limitations and requirements;
- 10 (i) requirements and procedures for permit modification and amendment; and
- 11 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
12 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance  
13 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator  
14 notify the department in advance of each change in location.
- 15 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
16 quality permit system.
- 17 (5) Department approval of an application to transfer a portable emission source from one location to  
18 another is exempt from the provisions of 75-1-201(1).
- 19 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
20 appropriate applications.
- 21 (7) The department shall require that applications for permits be accompanied by any plans,  
22 specifications, and other information that it considers necessary.
- 23 (8) An application is not considered filed until the applicant has submitted all fees required under  
24 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
25 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
26 an application that the application is incomplete and fails to list the reasons why the application is considered  
27 incomplete, the application is considered filed as of the date of the purported filing. ~~At the time that the  
28 department determines that an application is complete and if the department has determined that an  
29 environmental impact statement is necessary, it shall notify the applicant of the estimated cost due pursuant to  
30 75-1-205. If the department did not initially determine that an environmental impact statement was necessary~~

1 ~~and later determines, after preparation of an environmental assessment, that preparation of an environmental~~  
2 ~~impact statement is necessary, it shall immediately notify the applicant of the estimated cost due pursuant to~~  
3 ~~75-1-205.~~

4 (9) (a) Except as provided in 75-1-205(4) AND 75-1-208(4)(b), if an application for a permit requires the  
5 preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter  
6 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the  
7 application within:

8 (i) ~~if the department prepares the environmental impact statement, within 180 days after the~~  
9 ~~department's receipt of a filed application, as provided in subsection (8), if the department prepares the~~  
10 ~~environmental impact statement; or payment of the estimated cost pursuant to 75-1-205, whichever occurs later.~~  
11 ~~However, if the applicant is required by 75-1-205(5) to pay additional costs, the department may not issue the~~  
12 ~~permit until the applicant pays those costs. IF THE DEPARTMENT PREPARES THE ENVIRONMENTAL IMPACT STATEMENT;~~

13 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state  
14 agency other than the department has been designated by the governor as lead agency for preparation of the  
15 environmental impact statement; or

16 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
17 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact  
18 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

19 (b) If an application does not require the preparation of an environmental impact statement, is not  
20 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42  
21 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt  
22 of a filed application, as provided in subsection (8), of its approval or denial of the application.

23 (c) If an application does not require the preparation of an environmental impact statement and is  
24 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the  
25 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its  
26 approval or denial of the application.

27 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an  
28 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the  
29 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed  
30 application, as provided in subsection (8).

1 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that  
2 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
3 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required  
4 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications  
5 within the time period provided for in 75-2-215(3)(e).

6 (f) The time for notification may be extended for 30 days by written agreement of the department and  
7 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.  
8 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's  
9 agent.

10 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the  
11 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
12 the department to act in a timely manner.

13 (10) When the department approves or denies the application for a permit under this section, a person  
14 who is jointly or severally adversely affected by the department's decision may request a hearing before the  
15 board. The request for hearing must be filed within 15 days after the department renders its decision and must  
16 include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana  
17 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this  
18 subsection.

19 (11) (a) The department's decision on the application is not final until 15 days have elapsed from the  
20 date of the decision.

21 (b) The filing of a request for hearing does not stay the department's decision. However, the board may  
22 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

23 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or  
24 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
25 requesting the stay.

26 (c) Upon granting a stay, the board may require a written undertaking to be given by the party  
27 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees  
28 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use  
29 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

30 (12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on

1 draft air quality permits for applications that:

2 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

3 (b) are subject to the requirements of 75-2-215; or

4 (c) require the preparation of an environmental impact statement.

5 (13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or  
6 creation of:

7 (i) general permits covering multiple similar sources; or

8 (ii) other permits covering multiple similar sources.

9 (b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the  
10 permit upon authorization by the department or upon notice to the department."  
11

12 **Section 7.** Section 75-10-922, MCA, is amended to read:

13 **"75-10-922. Study, evaluation, and report on proposed facility.** (1) After receipt of an application,  
14 the department shall within 90 days notify the applicant in writing that:

15 (a) the application is accepted as complete; or

16 (b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and  
17 resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the  
18 application is in compliance and is accepted as complete. ~~At the time that the department determines that an  
19 application is complete and if the department has determined that an environmental impact statement is  
20 necessary, it shall notify the applicant of the estimated cost due pursuant to 75-1-205. If the department did not  
21 initially determine that an environmental impact statement was necessary and later determines, after preparation  
22 of an environmental assessment, that preparation of an environmental impact statement is necessary, it shall  
23 immediately notify the applicant of the estimated cost due pursuant to 75-1-205.~~

24 (2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through  
25 75-10-922 ~~and payment of any estimated cost pursuant to 75-1-205~~, the department shall commence an  
26 intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in  
27 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and  
28 reports submitted by the applicant or compiled by a state or federal agency.

29 (3) Except as provided in 75-1-205(4) AND 75-1-208(4)(b), within 1 year following acceptance of a  
30 complete application for a facility ~~and, if preparation of an environmental impact statement is necessary,~~

1 ~~payment of any estimated cost pursuant to 75-1-205~~, the department shall make a report to the board that must  
 2 contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its  
 3 study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana  
 4 Environmental Policy Act, Title 75, chapter 1, if applicable."

5  
 6 ~~Section 7. Section 75-10-929, MCA, is amended to read:~~

7 ~~"75-10-929. Decision of board -- findings necessary for certification. (1) Within 90 days after~~  
 8 ~~submission of the recommended decision by the department, the board shall make complete findings, issue an~~  
 9 ~~opinion, and render a final decision upon the record, either granting or denying the application for a certificate~~  
 10 ~~as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers~~  
 11 ~~appropriate. However, if payment of additional costs is required by 75-1-205(5), the board's decision does not~~  
 12 ~~become effective until the applicant pays those costs.~~

13 ~~(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board~~  
 14 ~~unless it finds and determines:~~

15 ~~(a) the nature of the probable environmental impact;~~

16 ~~(b) that the facility minimizes adverse environmental impact, considering the state of available~~  
 17 ~~technology and the nature and economics of the various alternatives;~~

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

23 ~~(d) that the facility will serve the public interest;~~

24 ~~(e) any impacts of the facility according to each of the criteria listed in 75-10-920;~~

25 ~~(f) the solid waste disposal needs listed in 75-10-920(4); and~~

26 ~~(g) that the applicant has fully mitigated the loss of wildlife habitat, through either onsite or offsite habitat~~  
 27 ~~improvements.~~

28 ~~(3) In determining that the facility will serve the public interest, the board shall consider:~~

29 ~~(a) the items listed in subsections (2)(a) and (2)(b);~~

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

- 1 ~~\_\_\_\_\_ (c) the effects of the economic activity resulting from the proposed facility;~~  
 2 ~~\_\_\_\_\_ (d) the effects of the proposed facility on the public health, welfare, and safety; and~~  
 3 ~~\_\_\_\_\_ (e) any other factors that it considers relevant."~~

4

5 **Section 8.** Section 75-20-201, MCA, is amended to read:

6 **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**  
 7 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in  
 8 operation on January 1, 1973, a person may not commence to construct a facility in the state without first  
 9 applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

10 (2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained  
 11 except in conformity with the certificate and any terms, conditions, and modifications contained within the  
 12 certification.

13 (3) A certificate may only be issued pursuant to this chapter.

14 (4) If the department decides to issue a certificate for a nuclear facility, it shall report the  
 15 recommendation to the applicant and may not issue the certificate until the recommendation is approved by a  
 16 majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

17 (5) A person that proposes to construct an energy-related project that is not defined as a facility  
 18 pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions  
 19 of this chapter.

20 (6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all  
 21 facilities over which an agency of the federal government has jurisdiction.

22 (7) All judicial challenges of certificates for projects with a project cost, as determined ~~under 75-4-203~~  
 23 by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending  
 24 in that court. If the court determines that the challenge was without merit or was for an improper purpose, such  
 25 as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may  
 26 award attorney fees and costs incurred in defending the action."

27

28 **Section 9.** Section 75-20-216, MCA, is amended to read:

29 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**

30 (1) ~~(a)~~ After receipt of an application, the department shall within 30 days notify the applicant in writing that:

1           ~~(a)(i)(A)~~ the application is in compliance and is accepted as complete; or

2           ~~(b)(ii)(B)~~ the application is not in compliance and shall list the deficiencies. Upon correction of these  
3 deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing  
4 that the application is in compliance and is accepted as complete.

5           ~~(b) At the time that the department determines that an application is complete and if the department  
6 has determined that an environmental impact statement is necessary, it shall notify the applicant of the estimated  
7 cost due pursuant to 75-1-205. If the department did not initially determine that an environmental impact  
8 statement was necessary and later determines, after preparation of an environmental assessment, that  
9 preparation of an environmental impact statement is necessary, it shall immediately notify the applicant of the  
10 estimated cost due pursuant to 75-1-205.~~

11           (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this  
12 section ~~and payment of any estimated cost required to be paid under 75-1-205~~, the department shall commence  
13 an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and  
14 shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall  
15 use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the  
16 applicant or compiled by a state or federal agency.

17           (3) Except as provided in ~~75-1-205(4)~~, 75-1-208(4)(b)<sub>1</sub>, and 75-20-231, the department shall issue<sub>1</sub> within  
18 9 months following the date of acceptance of an application ~~and, if an environmental impact statement is  
19 necessary, payment of any estimated cost required to be paid by 75-1-205~~, any decision, opinion, order,  
20 certification, or permit required under the laws, other than those contained in this chapter, administered by the  
21 department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under  
22 those laws. Nevertheless, the department retains authority to make the determination required under  
23 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection  
24 process. Prior to the issuance of a preliminary decision by the board and pursuant to rules adopted by the  
25 department, the department shall provide an opportunity for public review and comment.

26           (4) Except as provided in ~~75-1-205(4)~~, 75-1-208(4)(b)<sub>1</sub>, and 75-20-231, within 9 months following  
27 acceptance of an application for a facility ~~and, if preparation of an environmental impact statement is necessary,  
28 payment of the estimated cost pursuant to 75-1-205~~, the department shall issue a report that must contain the  
29 department's studies, evaluations, recommendations, other pertinent documents resulting from its study and  
30 evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental

1 Policy Act may be included in the department findings if compelling evidence indicates that adverse  
 2 environmental impacts are likely to result due to the construction and operation of a proposed facility. If the  
 3 application is for a combination of two or more facilities, the department shall issue its report within the greater  
 4 of the lengths of time provided for in this subsection for either of the facilities.

5 (5) For projects subject to joint review by the department and a federal land management agency, the  
 6 department's certification decision may be timed to correspond to the record of decision issued by the  
 7 participating federal agency.

8 (6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation;  
 9 revenue; and public service regulation shall report to the department information relating to the impact of the  
 10 proposed site on each department's area of expertise. The report may include opinions as to the advisability of  
 11 granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to  
 12 the departments making reports to reimburse them for the costs of compiling information and issuing the  
 13 required report."

14  
 15 ~~Section 10. Section 75-20-301, MCA, is amended to read:~~

16 ~~"75-20-301. Decision of department -- findings necessary for certification. (1) Within 30 days after~~  
 17 ~~issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b) and payment of~~  
 18 ~~any additional costs required to be paid by 75-1-205(5), the department shall approve a facility as proposed or~~  
 19 ~~as modified or an alternative to a proposed facility if the department finds and determines:~~

20 ~~(a) the basis of the need for the facility;~~

21 ~~(b) the nature of the probable environmental impact;~~

22 ~~(c) that the facility minimizes adverse environmental impact, considering the state of available~~  
 23 ~~technology and the nature and economics of the various alternatives;~~

24 ~~(d) in the case of an electric, gas, or liquid transmission line or aqueduct:~~

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

26 ~~(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility~~  
 27 ~~systems serving the state and interconnected utility systems; and~~

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

29 ~~(e) that the location of the facility as proposed conforms to applicable state and local laws and~~  
 30 ~~regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied~~

1 ~~to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of~~  
2 ~~factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly~~  
3 ~~affected government subdivisions;~~  
4 ~~—— (f) that the facility will serve the public interest, convenience, and necessity;~~  
5 ~~—— (g) that the department or board has issued any necessary air or water quality decision, opinion, order,~~  
6 ~~certification, or permit as required by 75-20-216(3); and~~  
7 ~~—— (h) that the use of public lands for location of the facility was evaluated and public lands were selected~~  
8 ~~whenever their use is as economically practicable as the use of private lands.~~  
9 ~~—— (2) In determining that the facility will serve the public interest, convenience, and necessity under~~  
10 ~~subsection (1)(f), the department shall consider:~~  
11 ~~—— (a) the items listed in subsections (1)(a) and (1)(b);~~  
12 ~~—— (b) the benefits to the applicant and the state resulting from the proposed facility;~~  
13 ~~—— (c) the effects of the economic activity resulting from the proposed facility;~~  
14 ~~—— (d) the effects of the proposed facility on the public health, welfare, and safety;~~  
15 ~~—— (e) any other factors that it considers relevant.~~  
16 ~~—— (3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in~~  
17 ~~75-20-104(8)(e), the department shall approve a facility as proposed or as modified or an alternative to a~~  
18 ~~proposed facility if the department finds and determines:~~  
19 ~~—— (a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant~~  
20 ~~environmental impacts; and~~  
21 ~~—— (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary~~  
22 ~~terms, will not result in:~~  
23 ~~—— (i) a violation of a law or standard that protects the environment; or~~  
24 ~~—— (ii) a violation of a law or standard that protects the public health and safety.~~  
25 ~~—— (4) For facilities defined in 75-20-104, if the department cannot make the findings required in this~~  
26 ~~section, it shall deny the certificate."~~

27  
28 **Section 10.** Section 75-20-401, MCA, is amended to read:  
29 **"75-20-401. Additional requirements by other governmental agencies not permitted after**  
30 **issuance of certificate -- exceptions -- venue for challenging certificate issuance.** (1) Notwithstanding any

1 other law, a state or regional agency or municipality or other local government may not require any approval,  
2 consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility  
3 authorized by a certificate issued pursuant to this chapter, except that the department and board retain the  
4 authority that they have or may be granted to determine compliance of the proposed facility with state and  
5 federal standards and implementation plans for air and water quality and to enforce those standards.

6 (2) This chapter does not prevent the application of state laws for the protection of employees engaged  
7 in the construction, operation, or maintenance of a facility.

8 (3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate  
9 holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless  
10 otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with  
11 a project cost, as determined ~~under 75-1-203~~ by the court, of more than \$1 million must have precedence over  
12 any civil cause of a different nature pending in that court. If the court determines that the challenge was without  
13 merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless  
14 or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

15 (4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the  
16 county in which the activity authorized by the certificate will occur. If an activity will occur in more than one  
17 county, the action may be brought in any of the counties in which the activity will occur."  
18

19 **Section 11.** Section 75-20-406, MCA, is amended to read:

20 **"75-20-406. Judicial review of board decisions.** (1) A person aggrieved by the final decision of the  
21 board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a  
22 state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the  
23 county in which the activity authorized by the certificate will occur. If an activity will occur in more than one  
24 county, the action may be brought in any of the counties in which the activity will occur.

25 (2) The judicial review procedure is the procedure for contested cases under the Montana  
26 Administrative Procedure Act.

27 (3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate  
28 holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless  
29 otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with  
30 a project cost, as determined ~~under 75-1-203~~ by the court, of more than \$1 million must have precedence over

1 any civil cause of a different nature pending in that court. If the court determines that the challenge was without  
2 merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless  
3 or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."  
4

5 **Section 12.** Section 76-4-125, MCA, is amended to read:

6 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except  
7 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing  
8 authority. The review by the reviewing authority must be as follows:

9 (a) At any time after the developer has submitted an application under the Montana Subdivision and  
10 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must  
11 include preliminary plans and specifications for the proposed development, whatever information the developer  
12 feels necessary for its subsequent review, and information required by the reviewing authority. Subdivision fees  
13 assessed by the reviewing authority must accompany the application. If the proposed development includes  
14 onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior  
15 to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site  
16 assessment to determine whether the site meets applicable state and local requirements.

17 (b) Except as provided in 75-1-205(4) AND 75-1-208(4)(b), the department shall make a final decision  
18 on the proposed subdivision within 60 days after the submission of a complete application and payment of fees  
19 to the reviewing authority unless an environmental impact statement is required, at which time this deadline may  
20 be increased to 120 days ~~after submission of a complete application and payment of the estimated cost pursuant~~  
21 ~~to 75-1-205. However, if the applicant is required by 75-1-205(5) to pay additional costs, the department may~~  
22 ~~not issue the decision until the applicant pays the additional costs.~~ The reviewing authority may not request  
23 additional information for the purpose of extending the time allowed for a review and final decision on the  
24 proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of  
25 subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not  
26 subject to a sanitary restriction.

27 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to  
28 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade  
29 the provisions of this part, are not subject to review:

30 (a) the exclusions cited in 76-3-201 and 76-3-204;

1 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,  
 2 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and  
 3 that the division does not fall within a previously platted or approved subdivision;

4 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste  
 5 disposal facilities as the department specifies by rule;

6 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter  
 7 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,  
 8 that adequate storm water drainage and adequate municipal facilities will be provided; and

9 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating  
 10 a parcel from the tract for purposes of transfer if:

11 (i) the remainder is served by a public or multiple-user sewage system approved before January 1,  
 12 1997, pursuant to local regulations or this chapter; or

13 (ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to  
 14 April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

15 (3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that,  
 16 prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be  
 17 segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features  
 18 sufficient to accommodate a replacement drainfield."  
 19

20 **Section 13.** Section 82-4-122, MCA, is amended to read:

21 **"82-4-122. Application and approval of permit.** (1) A person desiring a mine-site location permit shall  
 22 file with the department an application that must contain a reclamation plan for any preparatory work and any  
 23 other information the department considers necessary to determine if the proposed area to be affected by the  
 24 operation is appropriate for the location of a new strip mine or a new underground mine. The department may  
 25 require any information included in but not limited to an application for a strip-mining permit or  
 26 underground-mining permit as required by part 2 of this chapter. ~~At the time that the department determines that~~  
 27 ~~an application is complete and if the department has determined that an environmental impact statement is~~  
 28 ~~necessary, it shall notify the applicant of the estimated cost due pursuant to 75-1-205. If the department did not~~  
 29 ~~initially determine that an environmental impact statement was necessary and later determines, after preparation~~  
 30 ~~of an environmental assessment, that preparation of an environmental impact statement is necessary, it shall~~

1 ~~immediately notify the applicant of the estimated cost due pursuant to 75-1-205.~~

2 (2) Except as provided in 75-1-205(4) AND 75-1-208(4)(b), the department shall notify the applicant  
 3 within 365 days of receipt of a complete application ~~and, if preparation of an environmental impact statement~~  
 4 ~~is necessary, payment of the estimated cost pursuant to 75-1-205~~ if the proposed site is an acceptable location  
 5 for development of a new strip mine or a new underground mine. If the site is approved, the department shall  
 6 issue the applicant a mine-site location permit ~~after payment of any additional cost required to be paid by~~  
 7 ~~75-1-205(5)~~. If the location is not approved, the department shall notify the applicant in writing, setting forth  
 8 reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of  
 9 receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is  
 10 not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose  
 11 modifications, delete areas, or reject the entire plan."  
 12

13 **Section 14.** Section 82-4-231, MCA, is amended to read:

14 **"82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively  
 15 as the most modern technology and the most advanced state of the art will allow, each operator granted a permit  
 16 under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels,  
 17 shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules  
 18 adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading,  
 19 backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for  
 20 the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling,  
 21 highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be  
 22 taken to eliminate damages to landowners and members of the public, their real and personal property, public  
 23 roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and  
 24 hazards dangerous to life and property.

25 (2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply  
 26 with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and  
 27 water quality laws and rules and any applicable health and safety standards.

28 (3) The application for permit or major revision of a permit, which must contain the reclamation plan,  
 29 must be submitted to the department.

30 (4) The department shall determine whether the application is administratively complete. An application

1 is administratively complete if it contains information addressing each application requirement in 82-4-222 and  
2 the rules implementing that section and all information necessary to initiate processing and public review. The  
3 department shall notify the applicant in writing of its determination no later than 90 days after submittal of the  
4 application. If the department determines that the application is not administratively complete, it shall specify in  
5 the notice those items that the application must address. The application is presumed administratively complete  
6 as to those requirements not specified in the notice.

7 (5) If the department determines that an environmental impact statement on the application is required,  
8 it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).  
9 ~~The notice must include the estimated cost determined pursuant to 75-1-205.~~

10 (6) After the applicant receives notice that the application is administratively complete, the applicant  
11 shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general  
12 circulation in the locality of the proposed operation. The department shall notify various local governmental  
13 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which  
14 the proposed mining will take place of the application and provide a reasonable time for them to submit written  
15 comments. Any person having an interest that is or may be adversely affected or the officer or head of any  
16 federal, state, or local governmental agency or authority may file written objections to the proposed initial or  
17 revised application for permit or major revision within 30 days of the applicant's published notice. If written  
18 objections are filed and an objector requests an informal conference, the department shall hold an informal  
19 conference in the locality of the proposed operation within 30 days of receipt of the request. The department  
20 shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision  
21 within 60 days of the informal conference. The department may arrange with the applicant upon request by any  
22 party to the administrative proceeding for access to the proposed mining area for the purpose of gathering  
23 information relevant to the proceeding.

24 (7) The filing of written objections or a request for an informal conference may not preclude the  
25 department from proceeding with its review of the application as specified in subsection (8).

26 (8) (a) The department shall review each administratively complete application and determine the  
27 acceptability of the application. During the review, the department may propose modifications to the application  
28 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application  
29 is considered acceptable when the application is in compliance with all of the applicable requirements of this part  
30 and the regulatory program pursuant to this part.

1 (b) If the applicant significantly modifies the application after the application has been determined  
2 administratively complete in accordance with subsection (4), the department shall under this section either deny  
3 the application or conduct a new review, including an administrative completeness determination, public notice,  
4 and objection period.

5 (c) If an environmental impact statement is determined to be necessary prior to making a permit  
6 decision, the department shall complete and publish the final environmental impact statement at least 15 days  
7 prior to the date of issuance of the written findings pursuant to subsection (8)(f).

8 (d) Except as provided in 75-1-205(4) AND 75-1-208(4)(b), within 120 days after it determines that an  
9 application is administratively complete ~~if an environmental impact statement is not necessary or within 210 days~~  
10 ~~after the applicant pays the estimated cost pursuant to 75-1-205 if an environmental impact statement is~~  
11 ~~necessary~~, the department shall notify the applicant in writing whether the application is or is not acceptable. If  
12 the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may  
13 propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in  
14 the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the  
15 applicant revises the application in response to a notice of unacceptability, the department shall review the  
16 revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised  
17 application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the  
18 department shall conduct a new review, beginning with an administrative completeness determination.

19 (e) When the application is determined to be acceptable, the department shall publish notice of its  
20 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the  
21 proposed operation. Any person having an interest that is or may be adversely affected may file a written  
22 objection to the determination within 10 days of the department's last published notice. If a written objection is  
23 filed and an objector requests an informal conference, the department shall hold an informal conference in the  
24 locality of the proposed operation within 20 days of receipt of the request. The department shall notify the  
25 applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days  
26 of the informal conference.

27 (f) ~~(f)~~ Except as provided in 75-1-205(4) AND 75-1-208(4)(b), the department shall prepare written  
28 findings granting or denying the permit or major revision application in whole or in part not later than 45 days  
29 from the date the application is determined acceptable. However, if lands subject to the federal lands program  
30 are included in the application for permit or major revision, the department shall prepare and submit written

1 findings to the federal regulatory authority.

2 ~~(ii)~~ If the department's decision is to grant the permit, the department shall issue the permit on:

3 ~~—— (A) the date of its written finding or, if the applicant is required by 75-1-205(5) to pay additional costs,~~  
4 ~~on the date of payment of those costs, whichever is later; or~~

5 ~~(B) if any federal concurrence is necessary, on the date when the concurrence is obtained or, if the~~  
6 ~~applicant is required by 75-1-205(5) to pay additional costs, on the date of payment of those costs, whichever~~  
7 ~~is later.~~

8 ~~(iii)~~ If the application is denied, specific reasons for the denial must be set forth in the written notification  
9 to the applicant.

10 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately  
11 notify the board in writing of its failure to comply and the reasons for the failure to comply.

12 (9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by  
13 the department's permit decision may within 30 days of that decision submit a written notice requesting a  
14 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error.  
15 The hearing must be held within 30 days of the request. For purposes of a hearing, the department may order  
16 site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify  
17 the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings  
18 and decisions. A person who presided at the informal conference may not preside at the hearing or participate  
19 in the decision.

20 (10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence  
21 stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this  
22 part, the operator, consistent with the directives of subsection (1), shall:

23 (a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the  
24 department to be acid-producing, toxic, undesirable, or creating a hazard;

25 (b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating  
26 a hazard;

27 (c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage  
28 to grazing and agricultural lands, and pollution of surface and subsurface waters;

29 (d) remove or bury all metal, lumber, and other refuse resulting from the operation;

30 (e) use explosives in connection with the operation only in accordance with department regulations

1 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for  
2 other purposes;

3 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing  
4 subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading,  
5 topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved,  
6 the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private  
7 buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or  
8 a viable agricultural operation, or violate any other restrictions the department may consider necessary.

9 (g) stockpile and protect from erosion all mining and processing wastes until these wastes can be  
10 disposed of according to the provisions of this part;

11 (h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment  
12 in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of  
13 as provided by this part and the rules of the board.

14 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground  
15 mine workings when no longer needed;

16 (j) to the extent possible using the best technology currently available, minimize disturbances and  
17 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement  
18 of those resources when practicable;

19 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas  
20 and to the quality and quantity of water in surface water and ground water systems both during and after strip-  
21 or underground-coal-mining operations and during reclamation as necessary to support postmining land uses  
22 and to prevent material damage to the hydrologic balance in the adjacent area by:

23 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

24 (A) preventing or removing water from contact with toxic-producing deposits;

25 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being  
26 released to watercourses;

27 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic  
28 drainage from entering ground and surface waters;

29 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using  
30 the best technology currently available, additional contributions of suspended solids to streamflow or runoff

1 outside the permit area, but the contributions may not be in excess of requirements set by applicable state or  
2 federal law;

3 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement  
4 of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer  
5 and to be constructed as designed and as approved in the reclamation plan;

6 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from  
7 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and  
8 in a manner approved by the department;

9 (iv) restoring recharge capacity of the mined area to approximate premining conditions;

10 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water from  
11 mines;

12 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of  
13 alluvial valley floors in the arid and semiarid areas of the country;

14 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to  
15 ensure long-term stability; and

16 (viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary  
17 to support postmining land uses within the area affected and to prevent material damage to the hydrologic  
18 balance in adjacent areas;

19 (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation  
20 plan;

21 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

22 (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage  
23 except when the department determines that the resulting impoundment of water in the auger holes may create  
24 a hazard to the environment or the public health and safety;

25 (o) develop contingency plans to prevent sustained combustion;

26 (p) refrain from construction of roads or other access ways up a streambed or drainage channel or in  
27 proximity to the channel so as to seriously alter the normal flow of water;

28 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of  
29 this part, taking into consideration the physical, climatological, and other characteristics of the site;

30 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that

1 constitute a hazard to health and safety of the public;

2 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a  
3 manner that prevents a gravity discharge of water from the mine.

4 (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise  
5 placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other  
6 materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for  
7 which a bond has been posted under 82-4-223 or place the materials described in this section in a way that  
8 normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or  
9 outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner  
10 that protects areas outside the permit area. (Certain 2003 amendments void on occurrence of contingency--sec.  
11 15, Ch. 204, L. 2003.)"

12

13 **Section 15.** Section 82-4-337, MCA, is amended to read:

14 **"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.**

15 (1) (a) The department shall review all applications for operating permits for completeness within 60 days of  
16 receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial  
17 completeness notice must note all deficiency issues, and the department may not in a later completeness notice  
18 raise an issue pertaining to the initial application that was not raised in the initial notice. The department may,  
19 however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall  
20 notify the applicant concerning completeness as soon as possible. An application is considered complete unless  
21 the applicant is notified of any deficiencies within the appropriate review period. ~~At the time that the department~~  
22 ~~determines that an application is complete and if the department has determined that an environmental impact~~  
23 ~~statement is necessary, it shall notify the applicant of the estimated cost due pursuant to 75-1-205. If the~~  
24 ~~department did not initially determine that an environmental impact statement was necessary and later~~  
25 ~~determines, after preparation of an environmental assessment, that preparation of an environmental impact~~  
26 ~~statement is necessary, it shall immediately notify the applicant of the estimated cost due pursuant to 75-1-205.~~

27 (b) Except as provided in 75-1-205(4) AND 75-1-208(4)(b), unless the review period is extended as  
28 provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan  
29 of operation within 30 days of the determination that the application is complete or within 60 days of receipt of  
30 the application if the department does not notify the applicant of any deficiencies in the application. If the

1 applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation  
2 within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and  
3 pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form  
4 and amount of bond that will be required.

5 (c) A permit may not be issued until:

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

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

8 (iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

9 (d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has  
10 failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because  
11 of extended adverse weather conditions, the department may extend the time period prescribed in subsection  
12 (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall  
13 serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject  
14 to appeal to the board in accordance with the Montana Administrative Procedure Act.

15 (ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed  
16 for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the  
17 department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more  
18 than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

19 (iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed  
20 to review the application and reclamation plan for a major operation, the department and the applicant shall  
21 negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit  
22 reasonable review. The applicant may by written waiver extend this time period. ~~If the department determines  
23 that the additional time is necessary because of the need to prepare an environmental impact statement, the  
24 extended period for review starts when the applicant pays the estimated cost pursuant to 75-1-205.~~

25 (iv) If the department decides to hire a third-party contractor to prepare an environmental impact  
26 statement on the application, the department shall prepare a list of no fewer than four contractors acceptable  
27 to the department and shall provide the applicant with a copy of the list. The applicant shall provide the  
28 department with a list of at least 50% of the contractors from the department's list. The department shall select  
29 its contractor from the list provided by the applicant.

30 (v) Failure of the department to act upon a complete application within the extension period constitutes

1 approval of the application, and the permit must be issued promptly upon receipt of the bond as required in  
2 82-4-338. ~~However, if the applicant is required by 75-1-205(5) to pay additional costs, the department may not~~  
3 ~~issue the permit until the applicant pays those costs.~~

4 (2) The operating permit must be granted for the period required to complete the operation and is valid  
5 until the operation authorized by the permit is completed or abandoned unless the permit is suspended or  
6 revoked by the department as provided in this part.

7 (3) The operating permit must provide that the reclamation plan may be modified by the department,  
8 upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the  
9 term of the permit and for any of the following reasons:

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

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

13 (c) when significant environmental problem situations are revealed by field inspection.

14 (4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit  
15 revision. A modification of the operating permit, including a modification necessary to conform to the  
16 requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in  
17 accordance with the procedures for an application for a permit amendment or revision that are established  
18 pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part  
19 2.

20 (b) The modification of an operating permit may not be finalized and an existing bond amount may not  
21 be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

22 (5) During the term of an operating permit, an operator may apply for an amendment or revision to the  
23 permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

24 (6) Applications for major amendments must be processed in the same manner as applications for new  
25 permits.

26 (7) Major amendments are those that may significantly affect the environment. Minor amendments are  
27 those that will not significantly affect the environment. The board may by rule establish criteria for classification  
28 of amendments as major or minor. The rules must establish requirements for the content of applications for  
29 amendments and revisions and procedures for processing of minor amendments.

30 (8) If the department demonstrates that a revision may result in a significant environmental impact that

1 was not previously and substantially evaluated in an environmental impact statement, the application must be  
2 processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b),  
3 applications for minor amendments and other revisions must be processed within 30 days of receipt of an  
4 application."

5

6 **Section 16.** Section 82-4-349, MCA, is amended to read:

7 **"82-4-349. Limitations of actions -- venue.** (1) Legal actions seeking review of a department decision  
8 granting or denying an exploration license or operating permit issued under this part must be filed within 90 days  
9 after the decision is made. Summons must be issued and process served on all defendants within 60 days after  
10 the action is filed.

11 (2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in  
12 the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur  
13 in more than one county, the action may be brought in any of the counties in which the exploration or activity is  
14 proposed to occur.

15 (3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a  
16 party other than the license or permitholder or applicant must include the party to whom the license or permit  
17 was issued unless otherwise agreed to by the license or permitholder or applicant. All judicial challenges of  
18 licenses or permits for projects with a project cost, as determined ~~under 75-1-203~~ by the court, of more than \$1  
19 million must have precedence over any civil cause of a different nature pending in that court. If the court  
20 determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause  
21 unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and  
22 costs incurred in defending the action."

23

24 **Section 17.** Section 82-4-427, MCA, is amended to read:

25 **"82-4-427. Hearing -- appeal -- venue.** (1) A person who is aggrieved by a final decision of the  
26 department under this part is entitled to a hearing before the board, if a written request is submitted to the board  
27 within 30 days of the department's decision.

28 (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part  
29 6, apply to a hearing held under this section.

30 (3) An action to challenge the issuance of a permit pursuant to this section must be brought in the

1 county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one  
2 county, the action may be brought in any of the counties in which the activity is proposed to occur.

3 (4) A judicial challenge to a permit issued pursuant to this part by a party other than the permitholder  
4 or applicant must include the party to whom the permit was issued unless otherwise agreed to by the  
5 permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined ~~under~~  
6 ~~75-4-203~~ by the court, of more than \$1 million must have precedence over any civil cause of a different nature  
7 pending in that court. If the court determines that the challenge was without merit or was for an improper  
8 purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation,  
9 the court may award attorney fees and costs incurred in defending the action."

10

11 **Section 18.** Section 82-4-436, MCA, is amended to read:

12 **"82-4-436. Plan amendments -- venue.** (1) Unless an amendment to a plan of operation, reclamation  
13 plan, or other permit is proposed by the operator, the department may modify only the terms of a plan or permit  
14 in compliance with this section.

15 (2) If the department believes, based on credible evidence, that continued operation under the terms  
16 of an existing plan or permit would violate a substantive numerical or narrative state standard or regulation or  
17 otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

18 (3) The department shall notify the operator of the proposed amendment in writing. The notice must  
19 include:

20 (a) an identification of the existing plan or permit;

21 (b) the justification for the amendment, including all test results or other credible evidence that the  
22 department relied on in proposing the amendment; and

23 (c) the text of the proposed amendment.

24 (4) The operator may, within 15 days of receipt of the department's amendment notice, request a review  
25 of the amendment by the department director. The amendment is not effective or enforceable until 15 days  
26 following the issuance of the department's amendment notice or until after the department director affirms or  
27 modifies the amendment if a review by the director is requested. A decision by the department director is subject  
28 to the contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter  
29 4, parts 6 and 7.

30 (5) If the operator does not appeal the proposed amendment, the amendment becomes effective and

1 enforceable 15 days after the operator receives the notification.

2 (6) An action to challenge the issuance of an amendment pursuant to this section must be brought in  
3 the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county,  
4 the action may be brought in any of the counties in which the activity is proposed to occur.

5 (7) A judicial challenge to an amendment issued pursuant to this section by a party other than the  
6 amendment holder or applicant must include the party to whom the amendment was issued unless otherwise  
7 agreed to by the amendment holder or applicant. All judicial challenges of amendments for projects with a project  
8 cost, as determined ~~under 75-1-203~~ by the court, of more than \$1 million must have precedence over any civil  
9 cause of a different nature pending in that court. If the court determines that the challenge was without merit or  
10 was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or  
11 increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

12

13 **Section 19.** Section 85-2-124, MCA, is amended to read:

14 **"85-2-124. Fees ~~Costs~~ AND ~~FEES~~ for environmental impact statements.** (1) Whenever the department  
15 determines that the filing of an application or a combination of applications for a permit or approval under this  
16 chapter requires the preparation of an environmental impact statement as prescribed by the Montana  
17 Environmental Policy Act ~~and the application or combination of applications involves the use of 4,000 or more~~  
18 ~~acre-feet per year and 5.5 or more cubic feet per second of water~~ AND THE APPLICATION OR COMBINATION OF  
19 APPLICATIONS INVOLVES THE USE OF 4,000 OR MORE ACRE-FEET PER YEAR AND 5.5 OR MORE CUBIC FEET PER SECOND  
20 OF WATER, the applicant SHALL FOLLOW THE PROCESS AND shall pay to the department the ~~fee~~ costs OR FEES for  
21 the environmental impact statement as provided in 75-1-205 TITLE 75, CHAPTER 1, PARTS 1 AND 2 ~~prescribed in~~  
22 ~~this section. The department shall notify the applicant in writing within 90 days of receipt of a correct and~~  
23 ~~complete application or a combination of applications if it determines that an environmental impact statement~~  
24 ~~and fee payment of costs is required.~~

25 ~~————(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon~~  
26 ~~the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as provided~~  
27 ~~in this section. The maximum fee that must be paid to the department may not exceed the fees set forth in the~~  
28 ~~following declining scale: 2% of the estimated cost up to \$1 million; plus 1% of the estimated cost over \$1 million~~  
29 ~~and up to \$20 million; plus 1/2 of 1% of the estimated cost over \$20 million and up to \$100 million; plus 1/4 of~~  
30 ~~1% of the estimated cost over \$100 million and up to \$300 million; plus 1/8 of 1% of the estimated cost over~~

1 ~~\$300 million. The fee payment of costs AND FEES for the environmental impact statement must be deposited in~~  
 2 ~~the state special revenue fund to be used by the department only to comply with the Montana Environmental~~  
 3 ~~Policy Act in connection with the application or applications. Any amounts paid by the applicant but not actually~~  
 4 ~~expended by the department must be refunded to the applicant.~~

5 ~~——— (3) The department and the applicant may determine by agreement the estimated cost of any facility~~  
 6 ~~for purposes of computing the amount of the fee to be paid to the department by the applicant. The department~~  
 7 ~~may contract with an applicant for:~~

8 ~~——— (a) the development of information by the applicant or a third party on behalf of the department and the~~  
 9 ~~applicant concerning the environmental impact of any proposed activity under an application;~~

10 ~~——— (b) the division of responsibility between the department and an applicant for supervision over, control~~  
 11 ~~of, and payment for the development of information by the applicant or a third party on behalf of the department~~  
 12 ~~and the applicant under any contract;~~

13 ~~——— (c) the use or nonuse of a fee cost payments or any part of a fee costs paid to the department by an~~  
 14 ~~applicant.~~

15 ~~——— (4) Any payments made to the department or any third party by an applicant under any contract must~~  
 16 ~~be credited against any fee costs that the applicant is required to pay under this section. The department and~~  
 17 ~~the applicant may agree on additional credits against the fee costs for environmental work performed by the~~  
 18 ~~applicant at the applicant's own expense.~~

19 ~~(5)(2) A fee Costs OR FEES as prescribed by this section may not be assessed against an applicant for~~  
 20 ~~a permit or approval if the applicant has also filed an application for a certificate of compliance pursuant to the~~  
 21 ~~Montana Major Facility Siting Act and the appropriation or use of water involved in the application or applications~~  
 22 ~~for permit or approval has been or will be studied by the department pursuant to that act.~~

23 ~~(6) This section applies to all applications, pending or filed, for which the department has not~~  
 24 ~~commenced writing an environmental impact statement. This section does not apply to any application if the fee~~  
 25 ~~for the application would not exceed \$2,500.~~

26 ~~(7)(6)(3) Failure to submit the fee costs OR FEES as required by this section voids the application or~~  
 27 ~~applications.~~

28 ~~(8)(7)(4) The department may in its discretion rely upon the environmental studies, investigations,~~  
 29 ~~reports, and assessments made by any other state agency or any person, including any applicant, in the~~  
 30 ~~preparation of its environmental impact statement."~~

1

2           **Section 20.** Section 85-2-310, MCA, is amended to read:

3           **"85-2-310. Action on application.** (1) The department shall grant, deny, or condition an application  
4 for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no  
5 objections have been received and within 180 days if a hearing is held or objections have been received.  
6 However, in either case the time may be extended upon agreement of the applicant, or, in those cases where  
7 an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days  
8 upon order of the department. If the department orders the time extended, it shall serve a notice of the extension  
9 and the reasons for the extension by first-class mail upon the applicant and each person who has filed an  
10 objection as provided by 85-2-308.

11           (2) However, an application may not be approved in a modified form or upon terms, conditions, or  
12 limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard.  
13 If no objection is filed against the application but the department is of the opinion that the application should be  
14 approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should  
15 be denied, the department shall prepare a statement of its opinion and its reasons for the opinion. The  
16 department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the  
17 applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must  
18 further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

19           (3) The department may cease action upon an application for a permit and return it to the applicant  
20 when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for  
21 a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the  
22 reasons for which it was returned, and there is not a right to a priority date based upon the filing of the  
23 application. Returning an application pursuant to this subsection is a final decision of the department.

24           (4) For all applications filed after July 1, 1973, the department shall find that an application is not in good  
25 faith or does not show a bona fide intent to appropriate water for a beneficial use if:

26           (a) an application is not corrected and completed as required by 85-2-302;

27           (b) the appropriate filing fee is not paid;

28           (c) the application does not document:

29           (i) a beneficial use of water;

30           (ii) the proposed place of use of all water applied for;

1 (iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a  
 2 detailed project plan describing when and how much water will be put to a beneficial use. The project plan must  
 3 include a reasonable timeline for the completion of the project and the actual application of the water to a  
 4 beneficial use.

5 (iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how  
 6 much water will be put to a beneficial use; and

7 (v) if the water applied for is to be appropriated above that which will be used solely by the applicant  
 8 or if it will be marketed by the applicant to other users, information detailing:

9 (A) each person who will use the water and the amount of water each person will use;

10 (B) the proposed place of use of all water by each person;

11 (C) the nature of the relationship between the applicant and each person using the water; and

12 (D) each firm contractual agreement for the specified amount of water for each person using the water;

13 or

14 (d) the appropriate environmental impact statement ~~fee~~ costs OR FEES, if any, ~~is~~ are not paid as required  
 15 by 85-2-124."

16

17 ~~NEW SECTION. Section 22. Repealer. Sections 75-1-202, 75-1-203, and 75-1-204, MCA, are~~  
 18 ~~repealed.~~

19

20 NEW SECTION. Section 21. Effective date. [This act] is effective on passage and approval.

21

22 NEW SECTION. Section 22. Applicability. [This act] applies to environmental impact statements on  
 23 which the agency responsible for preparation commenced preparation after December 31, 2004.

24

- END -