

HOUSE BILL NO. 509

INTRODUCED BY R. ERICKSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE COAL RECLAMATION LAWS;  
5 CLARIFYING LEGISLATIVE FINDINGS; CLARIFYING CERTAIN DEFINITIONS AND DEFINING CERTAIN  
6 TERMS; CLARIFYING PERMIT APPLICATION REQUIREMENTS; CLARIFYING RECLAMATION PLAN  
7 ACTIONS; ADJUSTING CERTAIN TIMEFRAMES BECAUSE OF A DECREASE IN FEDERAL FUNDING;  
8 PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY WITH RULEMAKING AUTHORITY;  
9 REQUIRING THE DEPARTMENT TO PREPARE AN ANNUAL REPORT; AMENDING SECTIONS 82-4-202,  
10 82-4-203, 82-4-222, 82-4-231, 82-4-232, AND 82-4-233, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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14 **Section 1.** Section 82-4-202, MCA, is amended to read:

15 **"82-4-202. Intent -- policy -- findings.** (1) The legislature, mindful of its constitutional obligations under  
16 Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Strip and Underground  
17 Mine Reclamation Act. It is the legislature's intent that the requirements of this part provide adequate remedies  
18 for the protection of the environmental life support system from degradation and provide adequate remedies to  
19 prevent unreasonable depletion and degradation of natural resources.

- 20 (2) It is the declared policy of this state and its people to:
- 21 (a) maintain and improve the state's clean and healthful environment for present and future generations;
  - 22 (b) protect its environmental life-support system from degradation;
  - 23 (c) prevent unreasonable degradation of its natural resources;
  - 24 (d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational  
25 sites;
  - 26 (e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain  
27 state administration of the reclamation program;
  - 28 (f) require the legislature to provide for proper administration and enforcement, create adequate  
29 remedies, and set effective requirements and standards, especially as to reclamation of disturbed lands, in order  
30 to achieve the objectives enumerated in this subsection (2); and

1 (g) provide for the orderly development of coal resources through strip or underground mining to ensure  
2 the wise use of these resources and prevent the failure to conserve coal.

3 (3) The legislature finds and declares that:

4 (a) in order to achieve the policy objectives enumerated in subsection (2), promote the health and welfare  
5 of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and  
6 recreational productivity, save cultural, historic, and aesthetic values, and ensure a long-range dependable tax  
7 base, it is reasonably necessary to require that:

8 (i) all strip-mining and underground-mining operations be limited to those for which 5-year permits are  
9 granted;

10 (ii) a permit not be issued until the operator presents a comprehensive plan for reclamation and  
11 restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved;

12 (iii) certain other things must be done, certain remedies must be available, and certain lands because  
13 of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances;  
14 and

15 (iv) the department be given authority to administer and enforce a reclamation program that complies with  
16 Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

17 (b) this part is an exercise of the authority granted in the Montana constitution and, in particular, a  
18 response to the mandate expressed in Article IX of the constitution and that this part is also an exercise of the  
19 general police power to provide for the health and welfare of the people;

20 (c) coal mining alters the character of soils and overburden materials and that duplication of premining  
21 topography, soils, and vegetation composition is not practicable; and

22 (d) standards for successful reclamation must be well-defined and consistent so that mine operators can  
23 reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved,  
24 recognizing that Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended, may  
25 impose reclamation standards and goals, which may not allow for automatic bond release."

26

27 **Section 2.** Section 82-4-203, MCA, is amended to read:

28 **"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

29 (1) "Abandoned" means an operation in which a mineral is not being produced and that the department  
30 determines will not continue or resume operation.

1           (2) "Adjacent area" means the area outside the permit area where a resource or resources, determined  
2 in the context in which the term is used, are or could reasonably be expected to be adversely affected by  
3 proposed mining operations, including probable impacts from underground workings.

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

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

9           (4) "Approximate original contour" means that surface configuration achieved by backfilling and grading  
10 of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the  
11 general surface configuration of the land prior to mining and blends into and complements the drainage pattern  
12 of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

13           (a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the  
14 premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these  
15 features after mining, recognizing that rolls and dips need not be restored to their original locations and that level  
16 areas may be increased.

17           (b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so  
18 that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an  
19 unobstructed and controlled manner;

20           (c) postmining drainage basins may differ in size, location, configuration, orientation, and density of  
21 ephemeral ~~drainageways~~ streams compared to the premining topography if they are hydrologically stable, soil  
22 erosion is controlled ~~to the extent appropriate for the postmining land use~~, and the hydrologic balance is  
23 protected; and

24           (d) the reclaimed surface configuration is appropriate for the postmining land use.

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

28           (6) (a) "Area of land affected" means the area of land from which overburden is to be or has been  
29 removed and upon which the overburden is to be or has been deposited.

30           (b) The term includes:

- 1 (i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;
- 2 (ii) lands affected by the construction of new railroad loops and roads or the improvement or use of  
3 existing railroad loops and roads to gain access and to haul the mineral;
- 4 (iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition  
5 areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or  
6 underground mining; and
- 7 (iv) all activities necessary and incident to the reclamation of the mining operations.
- 8 (7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.
- 9 (8) "Board" means the board of environmental review provided for in 2-15-3502.
- 10 (9) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining  
11 operation and includes plans for the removal and use of minable and marketable coal located within the area  
12 planned to be mined.
- 13 (10) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,  
14 concentrating, or other processing or preparation.
- 15 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid  
16 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for  
17 other than commercial purposes.
- 18 (11) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The  
19 term includes commercial facilities associated with coal preparation activities but is not limited to loading  
20 buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal  
21 processing and other waste disposal areas.
- 22 (12) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and  
23 hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made  
24 to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated  
25 overburden commonly being cast down the slope below the mineral seam and the operating bench.
- 26 (13) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with  
27 grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and  
28 other similar crops.
- 29 (14) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to  
30 a tolerance of 5% error.

1 (15) "Department" means the department of environmental quality provided for in 2-15-3501.

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

4 (17) "Ephemeral ~~drainageway~~ stream" means a natural drainageway that flows only in response to  
5 precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the  
6 local water table or a drainage basin that may be replicated after mining.

7 (18) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an  
8 operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of  
9 compliance with reclamation standards established by the department is not considered failure to conserve coal.

10 (19) "Federal funding shortfall" means a reduction in the department's current fiscal year funding from  
11 the U.S. department of the interior, office of surface mining reclamation and enforcement, below the level of  
12 funding provided to the department in fiscal year 2003.

13 ~~(19)~~(20) "Fill bench" means that portion of a bench or table that is formed by depositing overburden  
14 beyond or downslope from the cut section as formed in the contour method of strip mining.

15 ~~(20)~~(21) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection,  
16 or management of species of fish or wildlife.

17 ~~(21)~~(22) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or  
18 wood-derived products.

19 ~~(22)~~(23) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation  
20 is: actively managed for

21 (a) used by livestock and wildlife for grazing or browsing; or

22 (b) used for occasional wild hay production.

23 ~~(23)~~(24) "Higher or better uses" means postmining land uses that have a higher economic value or  
24 noneconomic benefit to the landowner or the community than the premining land uses.

25 ~~(24)~~(25) "Hydrologic balance" means the relationship between the quality and quantity of water inflow  
26 to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake,  
27 or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes  
28 in ground water and surface water storage.

29 ~~(25)~~(26) "Imminent danger to the health and safety of the public" means the existence of any condition  
30 or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and

1 reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside  
2 the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or  
3 serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving  
4 rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

5 ~~(26)~~(27) "Industrial or commercial" means land used for:

6 (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or  
7 long-term storage of products. This includes all heavy and light manufacturing facilities.

8 (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other  
9 commercial establishments.

10 ~~(27)~~(28) "Intermittent stream" means a stream or reach of a stream that is below the water table for at  
11 least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

12 ~~(28)~~(29) "Land use" means specific uses or management-related activities, rather than the vegetative  
13 cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include  
14 land used for support facilities that are an integral part of the land use. Land use categories include cropland,  
15 developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland,  
16 land occasionally cut for hay, recreation, or residential.

17 ~~(29)~~(30) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale  
18 in the usual course of trade.

19 ~~(30)~~(31) "Material damage" means, with respect to protection of the hydrologic balance, degradation or  
20 reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area  
21 in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality  
22 standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an  
23 existing water use is affected, is material damage.

24 ~~(31)~~(32) "Method of operation" means the method or manner by which the cut, open pit, shaft, or  
25 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by  
26 the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land  
27 affected.

28 ~~(32)~~(33) "Movable coal" means that coal that can be removed through strip- or underground-mining  
29 methods adaptable to the location that coal is being mined or is planned to be mined.

30 ~~(33)~~(34) "Mineral" means coal and uranium.

1           ~~(34)~~(35) "Operation" means:

2           (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing  
3 and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal  
4 preparation plants; and

5           (b) all activities, including excavation incident to operations, or prospecting for the purpose of determining  
6 the location, quality, or quantity of a natural mineral deposit.

7           ~~(35)~~(36) "Operator" means a person engaged in:

8           (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards  
9 of mineral or overburden;

10           (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining  
11 within 12 consecutive calendar months in any one location;

12           (c) operating a coal preparation plant; or

13           (d) uranium mining using in situ methods.

14           ~~(36)~~(37) "Overburden" means:

15           (a) all of the earth and other materials that lie above a natural mineral deposit; and

16           (b) the earth and other material after removal from their natural state in the process of mining.

17           ~~(37)~~(38) "Pastureland" means land, which may or may not be irrigated, used primarily for the long-term  
18 production of adapted; or domesticated forage plants to be grazed by livestock or occasionally cut and cured for  
19 livestock feed.

20           ~~(38)~~(39) "Perennial stream" means a stream or part of a stream that flows continuously during all of the  
21 calendar year as a result of ground water discharge or surface runoff.

22           ~~(39)~~(40) "Person" means a person, partnership, corporation, association, or other legal entity or any  
23 political subdivision or agency of the state or federal government.

24           (41) "Plant mix" means seed or other plant propagation materials for grasses, forbes, shrubs, and trees  
25 suitable to achieve restoration of the hydrologic balance and that are predominantly native, diverse,  
26 self-regenerating, and suitable to support postmining land uses, except for use as cropland, pastureland, or prime  
27 farmland.

28           ~~(40)~~(42) "Prime farmland" means land that:

29           (a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the  
30 Federal Register; and

1 (b) historically has been used for intensive agricultural purposes.

2 ~~(41)~~(43) "Prospecting" means:

3 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching,  
4 or geophysical or other techniques necessary to determine:

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

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

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

9 ~~(42)~~(44) "Reclamation" means backfilling, subsidence and slide stabilization, ~~water control~~ erosion  
10 prevention, water and air pollution control, grading, highwall reduction, topsoiling, planting, revegetation, and  
11 other work conducted on lands affected by strip mining or underground mining under a plan approved by the  
12 department to make those lands capable of supporting the uses that those lands were capable of supporting prior  
13 to any mining or to higher or better uses, as well as to achieve restoration of the hydrologic balance.

14 ~~(43)~~(45) "Recreation" means land used for public or private leisure-time activities, including developed  
15 recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such  
16 as hiking, canoeing, and other undeveloped recreational uses.

17 ~~(44)~~(46) "Reference area" means a land unit maintained under appropriate management for the purpose  
18 of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by  
19 crop production methods approved by the department. Reference areas must be representative of geology, soil,  
20 slope, and vegetation in the permit area.

21 ~~(45)~~(47) "Remining" means conducting surface coal mining and reclamation operations that affect  
22 previously mined areas, ~~(for example, such as~~ the recovery of additional mineral from existing gob or tailings  
23 piles).

24 ~~(46)~~(48) "Residential" means land used for single- and multiple-family housing, mobile home parks, or  
25 other residential lodgings.

26 ~~(47)~~(49) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use  
27 that existed prior to mining or to higher or better uses.

28 (50) "Revegetation standard" means that the vegetation must support the postmining land use, minimizing  
29 erosion and damage to the hydrologic balance.

30 ~~(48)~~(51) (a) "Strip mining" means any part of the process followed in the production of mineral by the



1 opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit  
2 and removes mineral directly through a series of openings made by a machine that enters the deposit from a  
3 surface excavation or any other mining method or process in which the strata or overburden is removed or  
4 displaced in order to recover the mineral.

5 (b) For the purposes of this part only, strip mining also includes remining and coal preparation.

6 (c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for  
7 purposes of Title 15, chapter 35, part 1.

8 ~~(49)~~(52) "Subsidence" means a vertically downward movement of overburden materials resulting from  
9 the actual mining of an underlying mineral deposit or associated underground excavations.

10 ~~(50)~~(53) "Surface owner" means:

11 (a) a person who holds legal or equitable title to the land surface;

12 (b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be  
13 directly affected by strip-mining operations or who receives directly a significant portion of income from farming  
14 or ranching operations;

15 (c) the state of Montana when the state owns the surface; or

16 (d) the appropriate federal land management agency when the United States government owns the  
17 surface.

18 ~~(51)~~(54) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of  
19 the earth, that has been subjected to and influenced by genetic and environmental factors of parent material,  
20 climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is  
21 necessary for the growth and regeneration of vegetation on the surface of the earth.

22 ~~(52)~~(55) "Underground mining" means any part of the process that is followed in the production of a  
23 mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations  
24 penetrating the mineral stratum or strata. The term includes mining by in situ methods.

25 ~~(53)~~(56) "Unwarranted failure to comply" means:

26 (a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement  
27 of this part because of indifference, lack of diligence, or lack of reasonable care; or

28 (b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence,  
29 or lack of reasonable care.

30 ~~(54)~~(57) "Waiver" means a document that demonstrates the clear intention to release rights in the surface

1 estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

2 ~~(55)(58)~~ "Wildlife habitat enhancement feature" means a component of the reclaimed landscape,  
3 established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species,  
4 including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops,  
5 microtopography, or raptor perches.

6 ~~(56)(59)~~ "Written consent" means a statement that is executed by the owner of the surface estate and  
7 that is written on a form approved by the department to demonstrate that the owner consents to entry of an  
8 operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining  
9 and reclamation operations that fully comply with the terms and requirements of this part."

10

11 **Section 3.** Section 82-4-222, MCA, is amended to read:

12 **"82-4-222. Permit application -- application revisions.** (1) An operator desiring a permit shall file an  
13 application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and  
14 rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance  
15 investigation and study by the operator, include all known or readily discoverable past and present uses of the  
16 land and water to be affected and the approximate periods of use, and provide:

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

19 (b) the names and addresses of the owners of record and any purchasers under contracts for deed of  
20 the surface of the area of land to be affected by the permit and the owners of record and any purchasers under  
21 contracts for deed of all surface area within one-half mile of any part of the affected area;

22 (c) the names and addresses of the present owners of record and any purchasers under contracts for  
23 deed of all subsurface minerals in the land to be affected;

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

25 (e) the permanent and temporary post-office addresses of the applicant;

26 (f) whether the applicant or any person associated with the applicant holds or has held any other permits  
27 under this part and an identification of those permits;

28 (g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner,  
29 director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class  
30 of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

1 (ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining  
2 or underground-mining license or permit issued by any other state or federal agency revoked or have ever  
3 forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed  
4 explanation of the facts involved in each case must be attached.

5 (h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory  
6 authority;

7 (i) the names and addresses of any persons who are engaged in strip-mining or underground-mining  
8 activities on behalf of the applicant;

9 (j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the  
10 applicant has requested a permit;

11 (k) the results of any test borings or core samplings that the applicant or the applicant's agent has  
12 conducted on the land to be affected, including the nature and the depth of the various strata or overburden and  
13 topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an  
14 analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral  
15 elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the  
16 overburden, including topsoil. If test borings or core samplings are submitted, each permit application must  
17 contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup  
18 beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department  
19 requires across the surface and must run at a 90-degree angle to the other set. The department may not require  
20 intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known  
21 strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be  
22 accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and  
23 haulageways or other excavations to be excavated during the permit period. These cross sections must also  
24 include all existing shafts, entries, and haulageways.

25 (l) the name and date of a daily newspaper of general circulation within the county in which the applicant  
26 will prominently publish at least once a week for 4 successive weeks after submission of the application an  
27 announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed  
28 description of the area of land to be affected if a permit is granted;

29 (m) a determination of the probable hydrologic consequences of coal mining and reclamation operations,  
30 both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface water

1 and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the  
2 collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated  
3 mining in the area upon the hydrology of the area and particularly upon water availability can be made. However,  
4 this determination is not required until hydrologic information on the general area prior to mining is made available  
5 from an appropriate federal or state agency. The permit may not be approved until the information is available  
6 and is incorporated into the application. The determination of probable hydrologic consequences must include  
7 findings on:

8 (i) whether adverse impacts may occur to the hydrologic balance;  
9 (ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of  
10 ground water or surface water supplies;

11 (iii) whether the proposed operation may proximately result in contamination, diminution, or interruption  
12 of an underground or surface source of water within the proposed permit or adjacent areas that is used for  
13 domestic, agricultural, industrial, or other beneficial use; and

14 (iv) what impact the operation will have on:  
15 (A) sediment yields from the disturbed area;  
16 (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local  
17 impact;

18 (C) flooding or streamflow alteration;  
19 (D) ground water and surface water availability; and

20 (E) other characteristics required by the department that potentially affect beneficial uses of water in and  
21 adjacent to the permit area;

22 (n) a plan for monitoring ground water and surface water, based upon the determination of probable  
23 hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of  
24 parameters that relate to the availability and suitability of ground water and surface water for current and  
25 approved postmining land uses and the objectives for protection of the hydrologic balance.

26 (o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other  
27 methods approved by the department, showing the manner of spoil placement, showing removal of coal volume  
28 and overburden swell, and including:

29 (i) locations and elevations of tie-in points with adjacent unmined drainageways;  
30 (ii) approximate locations of primary or highest order ~~drainageways~~ ephemeral streams and associated

- 1 drainage divides in the reclaimed topography; and
- 2 (iii) projected elevations of primary ~~drainageways~~ ephemeral streams and associated drainage divides
- 3 and generalized slopes with the level of detail appropriate to project the approximate original contour;
- 4 (p) the condition of the land to be covered by the permit prior to any mining, including:
- 5 (i) the land uses existing at the time of the application, including the location by legal description and
- 6 approximate acreage of each land use, and, if the land has a history of previous mining, the uses that preceded
- 7 any mining;
- 8 (ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil
- 9 characteristics, topography, ~~and vegetative cover~~, and plant species, including a discussion of:
- 10 (A) premining plant species composition and diversity for each use;
- 11 (B) the value for browse, shelter, grazing, and soil protection of the species having relative cover
- 12 requirements equaling or exceeding 2%; and
- 13 (C) plant communities as a whole; and
- 14 (iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as
- 15 well as the average yield of food, fiber, forage, or wood products from land under high levels of management;
- 16 (q) a coal conservation plan; and
- 17 (r) other or further information as the department may require.
- 18 (2) The application for a permit must be accompanied by two copies of all maps meeting the
- 19 requirements of subsections (2)(a) through (2)(q). The maps must:
- 20 (a) identify the area to correspond with the application;
- 21 (b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names
- 22 of owners of record of the affected area and within 1,000 feet of any part of the affected area;
- 23 (c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings,
- 24 cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;
- 25 (d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam
- 26 or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;
- 27 (e) show the date on which the map was prepared and the north point;
- 28 (f) show the final surface and underground water drainage plan on and away from the area of land
- 29 affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural
- 30 waterways used for drainage, and the streams or tributaries receiving the discharge.

- 1 (g) show the proposed location of waste or refuse area;
- 2 (h) show the proposed location of temporary subsoil and topsoil storage area;
- 3 (i) show the proposed location of all facilities;
- 4 (j) show the location of test boring holes;
- 5 (k) show the surface location lines of any geologic cross sections that have been submitted;
- 6 (l) show a listing of plant varieties encountered in the area to be affected, segregated by each land use
- 7 in the affected area, and their relative dominance in the area, together with an enumeration of tree varieties and
- 8 the approximate number of each variety occurring per acre on the area to be affected, and the locations generally
- 9 of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;
- 10 (m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the
- 11 best of my knowledge and belief all the information required by the mining laws of this state." The certification
- 12 must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.
- 13 (n) contain other or further information as the department may require.
- 14 (3) If the department finds that the probable total annual production at all locations of any strip-mining
- 15 or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable
- 16 hydrologic consequences that the department requires and the statement of result of test borings or core
- 17 samplings must, upon written request of the operator, be performed by a qualified public or private laboratory
- 18 designated by the department. The department shall assume the cost of the determination and statement to the
- 19 extent that it has received funds for this purpose.
- 20 (4) In addition to the information and maps required by this section, each application for a permit must
- 21 be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance,
- 22 and estimated cost for backfilling, subsidence and slide stabilization, water control erosion prevention, water and
- 23 air pollution control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation
- 24 plan for the area affected by the operation, which proposals must meet the requirements of this part and rules
- 25 adopted under this part. The reclamation plan must address the life of the operation and indicate the size,
- 26 sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.
- 27 (5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by
- 28 an insurance company authorized to do business in the state, certifying that the applicant has in force for the
- 29 strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability
- 30 insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements.

1 This policy must provide for personal injury and property damage protection in an amount adequate to  
2 compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation  
3 operations, including use of explosives, and entitled to compensation under applicable provisions of state law.  
4 The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until  
5 all reclamation operations have been completed.

6 (6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that  
7 is pending on January 1, 2004, in order to incorporate the provisions of this part.

8 (7) A permittee may apply to revise and the department may approve an application to incorporate the  
9 provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be  
10 revised whether or not reclamation has been completed pursuant to the reclamation plan.

11 (8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the  
12 applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which  
13 the major portion of mining is proposed to occur."  
14

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

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

28 (2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with  
29 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water  
30 quality laws and rules and any applicable health and safety standards.

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

3           (4) The department shall determine whether the application is administratively complete. An application  
4 is administratively complete if it contains information addressing each application requirement in 82-4-222 and  
5 the rules implementing that section and all information necessary to initiate processing and public review. The  
6 department shall notify the applicant in writing of its determination no later than 90 days after submittal of the  
7 application, unless a federal funding shortfall exists, in which case the department has an additional 180 days  
8 to makes its determination. If the department determines that the application is not administratively complete, it  
9 shall specify in the notice those items that the application must address. The application is presumed  
10 administratively complete as to those requirements not specified in the notice.

11           (5) If the department determines that an environmental impact statement on the application is required,  
12 it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

13           (6) After the applicant receives notice that the application is administratively complete, the applicant shall  
14 publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general  
15 circulation in the locality of the proposed operation. The department shall notify various local governmental  
16 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which  
17 the proposed mining will take place of the application and provide a reasonable time for them to submit written  
18 comments. Any person having an interest that is or may be adversely affected or the officer or head of any  
19 federal, state, or local governmental agency or authority may file written objections to the proposed initial or  
20 revised application for permit or major revision within 30 days of the applicant's published notice. If written  
21 objections are filed and an objector requests an informal conference, the department shall hold an informal  
22 conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall  
23 notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within  
24 60 days of the informal conference. The department may arrange with the applicant upon request by any party  
25 to the administrative proceeding for access to the proposed mining area for the purpose of gathering information  
26 relevant to the proceeding.

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

29           (8) (a) The department shall review each administratively complete application and determine the  
30 acceptability of the application. During the review, the department may propose modifications to the application



1 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is  
2 considered acceptable when the application is in compliance with all of the applicable requirements of this part  
3 and the regulatory program pursuant to this part.

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

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

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

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

29 (f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written findings  
30 granting or denying the permit or major revision application in whole or in part not later than 45 days from the date

1 the application is determined acceptable. However, if lands subject to the federal lands program are included in  
2 the application for permit or major revision, the department shall prepare and submit written findings to the federal  
3 regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on  
4 the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is  
5 obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification  
6 to the applicant.

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

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

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

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

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

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

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

27 (e) use explosives in connection with the operation only in accordance with department regulations  
28 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other  
29 purposes;

30 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing

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

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

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

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

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

16 (k) prevent material damage to the hydrologic balance outside the permit area and minimize the  
17 disturbances to the prevailing hydrologic balance at the mine site ~~and in adjacent areas~~ and to the quality and  
18 quantity of water in surface water and ground water systems both during and after strip- or  
19 underground-coal-mining operations and during reclamation by:

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

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

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

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

26 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using  
27 the best technology currently available, additional contributions of suspended solids to streamflow or runoff  
28 outside the permit area, but the contributions may not be in excess of requirements set by applicable state or  
29 federal law;

30 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of

- 1 strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and  
2 to be constructed as designed and as approved in the reclamation plan;
- 3 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from  
4 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and  
5 in a manner approved by the department;
- 6 (iv) restoring recharge capacity and soil zone characteristics of the mined area to approximate premining  
7 conditions;
- 8 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water from  
9 mines;
- 10 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of  
11 alluvial valley floors in the arid and semiarid areas of the country;
- 12 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to  
13 ensure long-term stability; and
- 14 (viii) any other actions that the department may prescribe;
- 15 (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation  
16 plan;
- 17 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;
- 18 (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage  
19 except when the department determines that the resulting impoundment of water in the auger holes may create  
20 a hazard to the environment or the public health and safety;
- 21 (o) develop contingency plans to prevent sustained combustion;
- 22 (p) refrain from construction of roads or other access ways up a streambed or drainage channel or in  
23 proximity to the channel so as to seriously alter the normal flow of water;
- 24 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this  
25 part, taking into consideration the physical, climatological, and other characteristics of the site;
- 26 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that  
27 constitute a hazard to health and safety of the public;
- 28 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a  
29 manner that prevents a gravity discharge of water from the mine.
- 30 (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise

1 placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials  
2 or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a  
3 bond has been posted under 82-4-223 or place the materials described in this section in a way that normal  
4 erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of  
5 that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects  
6 areas outside the permit area."

7

8 **Section 5.** Section 82-4-232, MCA, is amended to read:

9 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of  
10 operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land  
11 affected must be backfilled and graded to the approximate original contour of the land. However:

12 (i) consistent with the adjacent unmined landscape elements, the operator may propose and the  
13 department may approve regraded topography gentler than premining topography in order to enhance the  
14 postmining land use and develop a postmining landscape that will provide greater moisture retention, greater  
15 stability, and reduced soil losses from runoff and erosion;

16 (ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a  
17 long-term static safety factor of 1.3 or greater and to prevent slides;

18 (iii) permanent impoundments may be approved if they are suitable for the postmining land use and  
19 otherwise meet the requirements of this part, as provided by board rules; and

20 (iv) reclaimed topography must be suitable for the approved postmining land use.

21 (b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box  
22 cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land  
23 is achieved.

24 (c) When directed by the department, the operator shall construct in the final grading diversion ditches,  
25 depressions, or terraces that will accumulate or control the water runoff.

26 (2) In addition to the backfilling and grading requirements, the operator's method of operation on steep  
27 slopes may be regulated and controlled according to rules adopted by the board. These rules may require any  
28 measure to accomplish the purpose of this part.

29 (3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal,  
30 storage, replacement, and reconstruction, and the operator must as a minimum be required to:

1 (a) segregate the A horizon of the natural soil, except where it can be shown that other available soil  
2 materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this  
3 material separately from other spoil and provide needed protection from wind and water erosion or contamination  
4 by other acid or toxic material;

5 (b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination  
6 of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and  
7 that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to  
8 create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural  
9 soil; and if not used immediately, stockpile this material separately from other spoil and provide needed protection  
10 from wind and water erosion or contamination by acid or toxic material;

11 (c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction  
12 and uniform depth over the regraded spoil material; and

13 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

14 (4) All available topsoil must be removed in a separate layer, segregated in piles according to the  
15 premining land use, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation  
16 of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially  
17 the same treatment to any subsurface deposit of material that is capable, as determined by the department, of  
18 supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and  
19 graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation  
20 must be returned as the top layer.

21 (5) As determined by rules of the board, time limits must be established requiring backfilling, grading,  
22 subsidence and slide stabilization, ~~water control~~ erosion prevention, water and air pollution control, highwall  
23 reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization,  
24 sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

25 (6) (a) The permittee may file an application with the department for the release of all or part of a  
26 performance bond. The application must contain a proposed public notice of the precise location of the land  
27 affected, the number of acres for which bond release is sought, the permit and the date approved, the amount  
28 of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work  
29 performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan.  
30 In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee

1 has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water  
2 treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention  
3 to seek release from the bond.

4 (b) The department shall determine whether the application is administratively complete. An application  
5 is administratively complete if it includes:

6 (i) the location and acreage of the land for which bond release is sought;

7 (ii) the amount of bond release sought;

8 (iii) a description of the completed reclamation, including the date of performance;

9 (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved  
10 reclamation plan; and

11 (v) information required by rules implementing this part.

12 (c) The department shall notify the applicant in writing of its determination no later than 60 days after  
13 submittal of the application, unless a federal funding shortfall exists, in which case the department has an  
14 additional 30 days to notify the applicant of its determination. If the department determines that the application  
15 is not administratively complete, it shall specify in the notice those items that the application must address. After  
16 an application for bond release has been determined to be administratively complete by the department, the  
17 permittee shall publish a public notice that has been approved as to form and content by the department at least  
18 once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

19 (d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the  
20 responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or  
21 special expertise with respect to any environmental, social, or economic impact involved in the operation or is  
22 authorized to develop and enforce environmental standards with respect to the operation may file written  
23 objections to the proposed release of bond to the department within 30 days after the last publication of the  
24 notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the  
25 locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of  
26 the request for hearing. The department shall inform the interested parties of the time and place of the hearing.  
27 The date, time, and location of the public hearing must be advertised by the department in a newspaper of  
28 general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall  
29 notify the permittee and the objector of its final decision.

30 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department

1 pursuant to this section, the department may establish an informal conference to resolve written objections.

2 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,  
3 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of  
4 materials, and take evidence, including but not limited to conducting inspections of the land affected and other  
5 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required  
6 by this section must be made, and a transcript must be made available on the motion of any party or by order of  
7 the department.

8 (g) If the applicant significantly modifies the application after the application has been determined to be  
9 administratively complete, the department shall conduct a new review, including an administrative completeness  
10 determination. A significant modification includes but is not limited to:

11 (i) the notification of an additional property owner, local governmental body, planning agency, or sewage  
12 and water treatment authority of the permittee's intention to seek a bond release;

13 (ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release  
14 sought; or

15 (iii) a material change in the reclamation for which a bond release is sought or the information used to  
16 evaluate the results of that reclamation.

17 (h) The department shall, within 30 days of determining that the application is administratively complete  
18 or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the  
19 evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining  
20 reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or  
21 future occurrence of the pollution, and the estimated cost of abating the pollution.

22 (i) The department shall review each administratively complete application to determine the acceptability  
23 of the application. A complete application is acceptable if the application is in compliance with all of the applicable  
24 requirements of this part, the rules adopted under this part, and the permit.

25 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no  
26 later than 60 days from the date of the inspection, unless a federal funding shortfall exists, in which case the  
27 department has an additional 30 days to notify the applicant of its determination.

28 (ii) If the department determines that the application is not acceptable, it shall specify in the notice those  
29 items that the application must address.

30 (iii) If the applicant revises the application in response to a notice of unacceptability, the department shall



1 review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether  
2 the revised application is acceptable.

3 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,  
4 beginning with an administrative completeness determination.

5 (v) A significant modification includes but is not limited to:

6 (A) the notification of an additional property owner, local governmental body, planning agency, or sewage  
7 and water treatment authority of the permittee's intention to seek a bond release;

8 (B) a material increase in the acreage for which a bond release is sought or the amount of bond release  
9 sought; or

10 (C) a material change in the reclamation for which a bond release is sought or the information used to  
11 evaluate the results of that reclamation.

12 (k) The department may release the bond in whole or in part if it is satisfied the reclamation covered by  
13 the bond or portion of the bond has been accomplished as required by this part according to the following  
14 schedule:

15 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded  
16 area in accordance with the approved reclamation plan, the department shall release 60% of the bond or  
17 collateral for the applicable permit area.

18 (ii) After revegetation has been established on the regraded lands in accordance with the approved  
19 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing  
20 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover  
21 the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the  
22 portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the  
23 operator or the landowner have been made with the department. Any part of the bond may not be released under  
24 this subsection (6)(k)(ii):

25 (A) as long as the lands to which the release would be applicable are contributing suspended solids to  
26 streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

27 (B) before soil productivity for prime farm lands to which the release would be applicable has returned  
28 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent  
29 management practices, as determined from the soil survey.

30 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,

1 the department shall release the remaining portion of the bond, but not before the expiration of the period  
2 specified for responsibility and not until all reclamation requirements of this part are fully met.

3 (l) If the department disapproves the application for release of the bond or a portion of the bond, it shall  
4 notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions  
5 necessary to secure the release and allowing opportunity for a public hearing.

6 (m) When an application for total or partial bond release is filed with the department, it shall notify the  
7 municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior  
8 to the release of all or a portion of the bond.

9 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting  
10 the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved  
11 pursuant to subsection ~~(8)~~ (9).

12 (8) The department shall adopt rules that establish well-defined and consistent revegetation standards  
13 and plant mixes for alternate postmining land uses, such as fisheries and wildlife habitat and forestry, industrial,  
14 commercial, recreational, and residential uses, in order to achieve successful reclamation for the alternate  
15 postmining land uses.

16 ~~(8)(9)~~ (a) An operator may propose a higher or better use as an alternative postmining land use. If the  
17 landowner is not the operator, the operator shall submit written documentation of the concurrence of the  
18 landowner or the land management agency with jurisdiction over the land. The department may approve the  
19 proposed alternative postmining land use only if it meets all of the following criteria:

20 (i) There is a reasonable likelihood for achievement of the alternative land use, including supporting  
21 information showing that the postmining land use is financially viable.

22 (ii) The alternative land use does not present any actual or probable hazard to the public health or safety  
23 or any threat of water diminution or pollution.

24 (iii) The alternative land use will not:

25 (A) be impractical or unreasonable;

26 (B) be inconsistent with applicable land use policies or plans;

27 (C) involve unreasonable delay in implementation; ~~or~~

28 (D) cause or contribute to violation of federal, state, or local law; or

29 (E) interfere with restoration of the hydrologic balance.

30 (b) As used in this section, the term "landowner" includes a person who has sold the surface estate to

1 the operator with an option to repurchase the surface estate after mining and reclamation are complete.

2 ~~(9)(10)~~ The reclamation plan must incorporate appropriate wildlife habitat enhancement features that  
 3 are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to  
 4 enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered  
 5 species that have been documented to live in the area of land affected, and to enhance wetlands and riparian  
 6 areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement  
 7 features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the  
 8 designated land use.

9 ~~(10)(11)~~ Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads,  
 10 or pipelines, may be replaced as part of the reclamation plan."

11

12 **Section 6.** Section 82-4-233, MCA, is amended to read:

13 **"82-4-233. Planting of vegetation following grading of disturbed area.** (1) The operator shall  
 14 establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and  
 15 other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance  
 16 with the approved permit and reclamation plan and that is:

17 (a) diverse, effective, and permanent;

18 (b) composed of species native to the area or of introduced species when desirable and necessary to  
 19 achieve the postmining land use and when approved by the department;

20 (c) at least equal in extent of cover and root development to the natural vegetation of the area in order  
 21 to rebuild recharge capacity and soil zone characteristics necessary to achieve restoration of the hydrologic  
 22 balance; and

23 (d) capable of stabilizing the soil surface in order to control prevent erosion ~~to the extent appropriate for~~  
 24 ~~the approved postmining land use~~ with the best available technology.

25 (2) The reestablished plant species must:

26 (a) be compatible with the approved postmining land use;

27 (b) have the same seasonal growth characteristics as the original vegetation;

28 (c) be capable of self-regeneration and plant succession;

29 (d) be compatible with the plant and animal species of the area; and

30 (e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws

1 or regulations.

2 (3) Reestablished vegetation must be appropriate to the postmining land use so that when the  
3 postmining land use is:

4 (a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

5 (b) pastureland or grazing land, reestablished vegetation must have ~~use~~ demonstrated suitability for  
6 grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;

7 (c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve  
8 appropriate stocking rates.

9 (4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection  
10 (1)."

11  
12 **NEW SECTION. Section 7. Annual report.** The department shall prepare an annual report on the  
13 progress of reclamation composed of regrading, topsoiling, subsidence and slide stabilization, erosion prevention,  
14 water and air pollution control, and revegetation success by projected land use for each operating permit  
15 administered by the department. The report must be made available to the public in the each office where the  
16 department has stationed employees that administer this part.

17  
18 **NEW SECTION. Section 8. Codification instruction.** [Section 7] is intended to be codified as an  
19 integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 7].

20  
21 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
22 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are severable from the invalid applications.

24  
25 **NEW SECTION. Section 10. Effective date.** [This act] is effective July 1, 2007.

26 - END -