

HOUSE BILL NO. 437  
INTRODUCED BY A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING THE ENVIRONMENT; PROVIDING THAT THE ENACTMENT OF CERTAIN LEGISLATION IS THE LEGISLATIVE IMPLEMENTATION OF ARTICLE II, SECTION 3, AND ARTICLE IX OF THE MONTANA CONSTITUTION AND PROVIDING THAT COMPLIANCE WITH THE REQUIREMENTS OF THE LEGISLATIVE IMPLEMENTATION CONSTITUTES COMPLIANCE WITH THE CONSTITUTION; REQUIRING THAT A CHALLENGE TO A PERMIT ISSUED PURSUANT TO THE AIR QUALITY LAWS OR WATER QUALITY LAWS OR A CHALLENGE TO A CERTIFICATE ISSUED PURSUANT TO THE MONTANA MAJOR FACILITY SITING ACT MUST INCLUDE AN ACTION FOR INJUNCTION AGAINST THE PARTY TO WHOM THE PERMIT OR CERTIFICATE WAS ISSUED; PROVIDING THAT ANY TIME REQUIREMENT UNDER A PERMIT OR CERTIFICATE IS EXTENDED BY THE DURATION OF THE INJUNCTION; PROVIDING THAT AN ACTION CHALLENGING THE ISSUANCE OF A PERMIT UNDER THE AIR QUALITY LAWS, THE ISSUANCE OF A PERMIT UNDER THE WATER QUALITY LAWS, OR A CERTIFICATE ISSUED UNDER THE MAJOR FACILITY SITING LAWS MUST BE BROUGHT IN THE COUNTY IN WHICH THE PERMITTED ACTIVITY OR ACTIVITY AUTHORIZED IN THE CERTIFICATE WILL OCCUR; PROVIDING THAT FOR AN ACTIVITY THAT WILL OCCUR IN MORE THAN ONE COUNTY, ANY COUNTY IN WHICH THE ACTIVITY WILL OCCUR IS A PROPER VENUE; PROVIDING THAT A PERSON MAY NOT CONDUCT INVESTIGATIONS OR REMEDIAL ACTIONS CONCERNING CLEANUP ACTIVITIES ON ANY SITE THAT IS SUBJECT TO AN ADMINISTRATIVE OR JUDICIAL ORDER; AMENDING SECTIONS 50-40-102, 75-1-102, 75-1-103, 75-2-102, 75-2-104, 75-2-211, 75-5-101, 75-5-102, 75-5-401, 75-5-403, 75-5-614, 75-7-102, 75-10-202, 75-10-402, 75-10-703, 75-10-706, 75-10-902, 75-11-202, 75-11-301, 75-11-502, 75-20-102, 75-20-201, 75-20-401, 75-20-406, 76-6-102, 76-7-102, 82-4-102, 82-4-202, 82-4-301, 82-4-402, AND 87-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, Article II, section 3, of the Montana Constitution enumerates certain inalienable individual rights, including the right to a clean and healthful environment, the right of pursuing life's basic necessities, the right of enjoying and defending an individual's life and liberty, the right of acquiring, possessing, and protecting property, and the right of seeking individual safety, health, and happiness in all lawful ways; and

WHEREAS, the constitutionally enumerated rights are by their very nature bound to result in competing interests in specific fact situations; and

WHEREAS, Article IX, section 1, of the Montana Constitution provides that the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations and directs the Legislature to provide for the administration and enforcement of this duty and also directs the Legislature to provide adequate remedies for the protection of the environmental life support system from degradation and to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources; and

WHEREAS, the Legislature has reviewed the intent of the framers of the 1972 Montana Constitution as evidenced in the verbatim transcripts of the constitutional convention; and

WHEREAS, there is no indication that one enumerated inalienable right is intended to supersede other inalienable rights, including the right to use property in all lawful means; and

WHEREAS, the Legislature, mindful of its constitutional obligation to provide for the administration and enforcement of the constitution, has enacted a comprehensive set of laws to accomplish the goals of the constitution, including the Montana Clean Indoor Air Act of 1979, Title 50, chapter 40, part 1, MCA; the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA; the Clean Air Act of Montana, Title 75, chapter 2, parts 1 through 4, MCA; water quality laws, Title 75, chapter 5, MCA; The Natural Streambed and Land Preservation Act of 1975, Title 75, chapter 7, part 1, MCA; The Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA; The Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA; the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, MCA; the Montana Megalandfill Siting Act, sections 75-10-901 through 75-10-945, MCA; the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act, Title 75, chapter 11, part 2, MCA; the Montana Underground Storage Tank Act, Title 75, chapter 11, part 5, MCA; the Montana Major Facility Siting Act, Title 75, chapter 20, MCA; the Open-Space Land and Voluntary Conservation Easement Act, Title 76, chapter 6, MCA; the Environmental Control Easement Act, Title 76, chapter 7, MCA; The Strip and Underground Mine Siting Act, Title 82, chapter 4, part 1, MCA; The Montana Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, MCA; The Opencut Mining Act, Title 82, chapter 4, part 4, MCA; and The Nongame and Endangered Species Conservation Act, Title 87, chapter 5, part 1, MCA.

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

**Section 1.** Section 50-40-102, MCA, is amended to read:

**"50-40-102. Purpose Findings -- purpose.** The legislature, mindful of its constitutional obligations under

Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke."

**Section 2.** Section 75-1-102, MCA, is amended to read:

**"75-1-102. Purpose Findings -- purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The legislature finds that compliance with the requirements of parts 1 through 3 of this chapter and the rules adopted to implement parts 1 through 3 of this chapter constitutes compliance with the constitution.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council."

**Section 3.** Section 75-1-103, MCA, is amended to read:

**"75-1-103. Policy.** (1) The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources so that the state may:

- (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (d) protect the right to use and enjoy private property free of undue government regulation;
- (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;
- (f) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and
- (g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, that each person has the right to pursue life's basic necessities, and that each person has a responsibility to contribute to the preservation and enhancement of the environment. The implementation of these rights requires the balancing of the competing interests associated with the rights in order to protect the public health, safety, and welfare."

**Section 4.** Section 75-2-102, MCA, is amended to read:

**"75-2-102. Policy Findings -- policy and purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution has enacted the Clean Air Act of Montana. The legislature finds that compliance with the requirements of parts 1 through 4 of this chapter and the rules adopted to implement parts 1 through 4 of this chapter constitutes compliance with the constitution.

(2) It is ~~hereby declared to be~~ the public policy of this state and the purpose of this chapter to achieve and maintain ~~such~~ levels of air quality ~~as that~~ will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. This policy must be balanced with the policy of protecting the ability of the people to pursue life's

basic necessities and to acquire property and to use that property in all lawful ways.

~~(2)(3)~~ It is ~~also declared that local~~ Local and regional air pollution control programs ~~are to~~ must be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

~~(3)(4)~~ To these ends it is the purpose of this chapter to:

- (a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;
- (b) provide for an appropriate distribution of responsibilities among the state and local units of government;
- (c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and
- (d) provide a framework within which all values may be balanced in the public interest."

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

**"75-2-104. Limitations -- personal cause of action unabridged -- injunction for permit challenge -- venue.** (1) ~~Nothing in this~~ This chapter shall ~~shall~~ may not be construed to:

~~(1)(a)~~ grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

~~(2)(b)~~ affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

~~(3)(c)~~ supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

~~(4)(d)~~ abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A challenge to a permit issued pursuant to this chapter must include an action for injunction against the party to whom the permit was issued.

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

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

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

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

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

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;
- (g) requirements and procedures for suspension, modification, and revocation of permits by the department;
- (h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (i) requirements and procedures for permit modification and amendment; and
- (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

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

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

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

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

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

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

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

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

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

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

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

the department to act in a timely manner.

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

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

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

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

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

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

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

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued. The expiration time in this subsection is extended by any time during which an injunction is in effect pursuant to 75-2-104(2).

(13) Any time requirement contained in a permit must be extended for time during which an injunction



is in effect pursuant to 75-2-104(2). (Terminates July 1, 2005--sec. 4, Ch. 588, L. 2001.)

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

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

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

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;
- (g) requirements and procedures for suspension, modification, and revocation of permits by the department;
- (h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (i) requirements and procedures for permit modification and amendment; and
- (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

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

(5) Department approval of an application to transfer a portable emission source from one location to

another is exempt from the provisions of 75-1-201(1).

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

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

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

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

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

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

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

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the

application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

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

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(12) Any time requirement contained in a permit must be extended for time during which an injunction is in effect pursuant to 75-2-104(2)."

**Section 7.** Section 75-5-101, MCA, is amended to read:

**"75-5-101. Policy.** It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution; and

(3) balance the inalienable rights to pursue life's basic necessities and possess and use property in lawful ways with the policy of preventing, abating, and controlling water pollution in implementing the program referred to in subsection (2)."

**Section 8.** Section 75-5-102, MCA, is amended to read:

**"75-5-102. Purpose Findings -- purpose -- rights of action not abridged.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this chapter. The legislature finds that compliance with the requirements of this chapter and the rules adopted to implement this chapter constitutes compliance with the constitution. A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality

or person, as owner of water rights or otherwise, in the exercise of ~~his~~ the person's rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution."

**Section 9.** Section 75-5-401, MCA, is amended to read:

**"75-5-401. Board rules for permits -- ground water exclusions.** (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and

unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of

sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) Any time requirement contained in a permit must be extended for time during which an injunction is in effect pursuant to 75-5-614(3)."

**Section 10.** Section 75-5-403, MCA, is amended to read:

**"75-5-403. Denial or modification of permit -- time for review of permit application -- venue for challenging permit issuance.** (1) The department shall review for completeness all applications for new permits within 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all major deficiency issues, based on the information submitted. The department and the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and the applicant or holder may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. The hearing must be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action of the board.

(3) An action to challenge the issuance of a permit pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."

**Section 11.** Section 75-5-614, MCA, is amended to read:

**"75-5-614. Injunctions authorized -- permit challenge.** (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

(3) A challenge to a permit issued pursuant to this chapter must include an action for injunction against the party to whom the permit was issued."

**Section 12.** Section 75-7-102, MCA, is amended to read:

**"75-7-102. Policy Findings -- policy.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and, in so doing, to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana."

**Section 13.** Section 75-10-202, MCA, is amended to read:

**"75-10-202. Legislative findings and policy.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Solid Waste Management Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible."

**Section 14.** Section 75-10-402, MCA, is amended to read:

**"75-10-402. Findings and purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Hazardous Waste Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

~~(1)~~(2) The legislature finds that the safe and proper management of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

~~(2)~~(3) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes and used oil; to establish a program of regulation over used oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ensure the safe and adequate management of hazardous wastes and used oil within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended."

**Section 15.** Section 75-10-703, MCA, is amended to read:

**"75-10-703. Actions -- general provisions.** (1) ~~No~~ An action taken by ~~any~~ a person to contain or remove a release, whether the action is taken voluntarily or at the request of the department or its designee, may not be construed as an admission of liability for the discharge.

(2) Actions taken by the department pursuant to 75-10-711 and 75-10-712 are not subject to the public bidding requirements of Title 18.

(3) Subject to 75-10-724, a private party may not bring an action, based upon a release, against a person who is in compliance with an order issued under 75-10-707 or 75-10-711."

**Section 16.** Section 75-10-706, MCA, is amended to read:

**"75-10-706. Purpose -- findings.** (1) The purposes of this part are to:

~~(1)~~(a) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

~~(2)~~(b) encourage private parties to clean up sites within the state at which releases of hazardous or



deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

~~(3)~~(c) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

(2) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Comprehensive Environmental Cleanup and Responsibility Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(3) A person who is not subject to an administrative or judicial order may not conduct any investigation or remedial action on any site that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department. Remedial action performed in accordance with this part meets the constitutional requirements of Article II, section 3, and Article IX of the Montana constitution."

**Section 17.** Section 75-10-902, MCA, is amended to read:

**"75-10-902. Purpose Findings -- purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Megalandfill Siting Act. The legislature finds that compliance with the requirements of 75-10-901 through 75-10-945 and the rules adopted to implement 75-10-901 through 75-10-945 constitutes compliance with the constitution.

~~(1)~~(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

~~(2)~~(3) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, ~~due to~~ because of the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933."

**Section 18.** Section 75-11-202, MCA, is amended to read:

**"75-11-202. Findings and purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

~~(1)~~(2) Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation, closure, and inspection require specialized knowledge, training, and experience.

~~(2)~~(3) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to provide for permitting, licensing, and inspection activities."

**Section 19.** Section 75-11-301, MCA, is amended to read:

**"75-11-301. Findings and purposes.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

~~(1)~~(2) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

~~(2)~~(3) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

~~(3)~~(4) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

~~(4)~~(5) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue

pursuant to the provisions of Article VIII, section 6, of the Montana constitution. ~~The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.~~

~~(5)~~(6) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks;

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and

(d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases."

**Section 20.** Section 75-11-502, MCA, is amended to read:

**"75-11-502. Findings and purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) The legislature finds that petroleum products and hazardous substances stored in underground tanks are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under this part. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in this part and other appropriate authority provided by law to remedy violations of requirements established under this part."

**Section 21.** Section 75-20-102, MCA, is amended to read:

**"75-20-102. Policy and legislative findings.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility Siting Act. The legislature finds that compliance with the requirements of this chapter and the rules adopted to

implement this chapter constitutes compliance with the constitution.

~~(1)~~(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

~~(2)~~(3) The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing that a electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of environmental compatibility acquired pursuant to this chapter.

~~(3)~~(4) The legislature also finds that it is the purpose of this chapter to:

- (a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;
- (b) ensure consideration of socioeconomic impacts;
- (c) provide citizens with the opportunity to participate in facility siting decisions; and
- (d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

**Section 22.** Section 75-20-201, MCA, is amended to read:

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

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

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

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation

to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

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

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

(7) Any time requirement contained in a certificate must be extended for time during which an injunction is in effect pursuant to 75-20-401(3)."

**Section 23.** Section 75-20-401, MCA, is amended to read:

**"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate -- exceptions -- venue for challenging certificate issuance.** (1) Notwithstanding any other law, ~~no~~ a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

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

(3) A challenge to a certificate issued pursuant to this chapter must include an action for injunction against the party to whom the certificate was issued as provided in this chapter.

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

**Section 24.** Section 75-20-406, MCA, is amended to read:

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

than one county, the action may be brought in any of the counties in which the activity will occur.

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

(3) A challenge to a certificate issued pursuant to this chapter must include an action for injunction against the party to whom the certificate was issued as provided in this chapter."

**Section 25.** Section 76-6-102, MCA, is amended to read:

**"76-6-102. Findings and policy.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Open-Space Land and Voluntary Conservation Easement Act. The legislature finds that compliance with the requirements of this chapter and the rules adopted to implement this chapter constitutes compliance with the constitution.

(2) The legislature finds that:

(1)(a) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(2)(b) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(3)(c) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(4)(d) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(5)(e) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(6)(f) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(7)(g) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

~~(8)(h)~~ the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest."

**Section 26.** Section 76-7-102, MCA, is amended to read:

**"76-7-102. Findings and purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Environmental Control Easement Act. The legislature finds that compliance with the requirements of this chapter and the rules adopted to implement this chapter constitutes compliance with the constitution.

~~(1)(2)~~ The legislature finds that:

(a) numerous sites throughout the state contain or may contain hazardous wastes or substances that may threaten the public health, safety, or welfare or the environment if certain uses are permitted on these sites or if certain activities are not performed on these sites;

(b) at some sites, protection of the public health, safety, or welfare or the environment may be enhanced by the application and enforcement of certain restrictions on the future use of the site or requirements for performance of certain activities;

(c) the creation of an enforceable easement mechanism for imposing restrictions on the use of a site and requiring performance of operations and maintenance activities may help protect the public health, safety, and welfare and the environment by:

(i) preventing or minimizing the exposure of the public to hazardous wastes or substances;

(ii) preventing the disturbance of important features of remediation work and remedial technologies employed at the site;

(iii) ensuring that the presence of hazardous wastes or substances and the features of remediation work and remedial technologies are properly considered in the future use or development of a site; or

(iv) requiring the performance of certain activities or the prohibition or limitation of certain activities, with respect to the site; and

(d) the expenditure of public funds for the acquisition or designation of interests and rights in real property to protect the public health, safety, and welfare and the environment is in the public's interest.

~~(2)(3)~~ It is the purpose of this chapter to authorize and enable federal public entities, other public bodies, and certain qualifying private organizations to provide for:

(a) the monitoring and protection of environmental control sites to ensure that those sites are not used for purposes that may threaten the public health, safety, or welfare or the environment;

(b) a process of reviewing the need for specialized construction, development, use, and safety measures if the owner or user of an environmental control site proposes a new use for which any contamination might present a risk to the public health, safety, or welfare or the environment; and

(c) a mechanism for prohibiting or limiting certain activities or requiring certain activities on an environmental control site to enhance protection of the public health, safety, or welfare or the environment."

**Section 27.** Section 82-4-102, MCA, is amended to read:

**"82-4-102. Policy Findings -- policy and purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

~~(1)~~(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

~~(2)~~(3) It is the purpose of this part:

(a) to vest in the department the authority to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove ~~such~~ those locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules;

(c) to satisfy the requirement of Article IX, section 2, of the constitution of this state; that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to ~~insure~~ ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

~~(3)~~(4) This part is ~~deemed to be~~ an exercise of the general police power to provide for the health and welfare of the people."

**Section 28.** Section 82-4-202, MCA, is amended to read:

**"82-4-202. Policy -- findings.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Strip and Underground Mine Reclamation Act. The legislature finds that compliance with the requirements of this part and the rules adopted



to implement this part constitutes compliance with the constitution.

~~(1)~~(2) It is the declared policy of this state and its people to:

- (a) maintain and improve the state's clean and healthful environment for present and future generations;
- (b) protect its environmental life-support system from degradation;
- (c) prevent unreasonable degradation of its natural resources;
- (d) restore, enhance, and preserve its scenic, historic, archaeological, scientific, cultural, and recreational sites;
- (e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;
- (f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards ~~(, especially as to reclamation of disturbed lands),~~ in order to achieve the ~~aforementioned~~ objectives enumerated in this subsection (2); and
- (g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~ ensure the wise use of these resources and prevent the failure to conserve coal.

~~(2)~~(3) The legislature hereby finds and declares that:

(a) in order to achieve the ~~aforementioned~~ policy objectives enumerated in subsection (2), promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ ensure a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that:

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

(ii) ~~that no~~ a permit not be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved;

(iii) ~~that~~ certain other things must be done, ~~that~~ certain remedies ~~are~~ must be available, ~~that and~~ certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, ~~all as more particularly appears in the remaining provisions of this part,~~ and

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

(b) this part be ~~deemed~~ considered to be an exercise of the authority granted in the Montana constitution, ~~as adopted June 6, 1972,~~ and, in particular, a response to the mandate expressed in Article IX ~~thereof~~ and also be ~~deemed~~ considered to be an exercise of the general police power to provide for the health and welfare of the

people."

**Section 29.** Section 82-4-301, MCA, is amended to read:

**"82-4-301. Legislative findings.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed."

**Section 30.** Section 82-4-402, MCA, is amended to read:

**"82-4-402. Policy Findings and policy.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut materials mining. Therefore, it is the purpose of this part:

~~(1)~~(a) to preserve natural resources;

~~(2)~~(b) to aid in the protection of wildlife and aquatic resources;

~~(3)~~(c) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut materials mining;

- (4)(d) to protect and perpetuate the taxable value of property through reclamation;
- (5)(e) to protect scenic, scientific, historic, or other unique areas; and
- (6)(f) to promote the health, safety, and general welfare of the people of this state."

**Section 31.** Section 87-5-103, MCA, is amended to read:

**"87-5-103. Legislative findings and policy.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and Endangered Species Conservation Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) The legislature finds and declares all of the following:

(1)(a) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ~~insure~~ ensure their perpetuation as members of ecosystems;

(2)(b) that species or subspecies of wildlife indigenous to this state ~~which that~~ may be found to be endangered within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;

(3)(c) that the state should assist in the protection of species or subspecies of wildlife ~~which that~~ are ~~deemed~~ considered to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless ~~such those~~ actions will assist in preserving or propagating the species or subspecies."

NEW SECTION. **Section 32. Venue.** A proceeding to challenge an action taken pursuant to parts 1 through 3 must be brought in the county in which the activity that is the subject of the action will occur. If an activity will occur in more than one county, the proceeding may be brought in any of the counties in which the activity will occur.

NEW SECTION. **Section 33. Codification instruction.** [Section 32] is intended to be codified as an integral part of Title 75, chapter 1, part 1, and the provisions of Title 75, chapter 1, part 1, apply to [section 32].

NEW SECTION. **Section 34. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 35. Applicability.** [This act] applies to causes of action challenging the

issuance of a permit or a certificate that are filed on or after [the effective date of this act].

- END -