HOUSE BILL NO. 437

INTRODUCED BY A. OLSON, DEPRATU, FORRESTER, FUCHS, GALLUS, GEBHARDT, KEANE, MATTHEWS, MCCARTHY, ROSS, D. RYAN, TASH

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~~ ADEQUATE REMEDIES AS REQUIRED BY THE CONSTITUTION; REQUIRING THAT A CHALLENGE TO A PERMIT ISSUED PURSUANT TO THE AIR QUALITY LAWS ~~OR WATER QUALITY LAWS~~ OR OPENCUT MINING RECLAMATION LAWS, A CHALLENGE TO A LICENSE OR PERMIT ISSUED PURSUANT TO THE METAL MINE RECLAMATION LAWS, A CHALLENGE TO A CERTIFICATE ISSUED PURSUANT TO THE MONTANA MAJOR FACILITY SITING ACT, OR AN AMENDMENT ISSUED PURSUANT TO THE OPENCUT MINING RECLAMATION LAWS MUST ~~INCLUDE AN ACTION FOR INJUNCTION AGAINST THE PARTY TO WHOM THE PERMIT OR CERTIFICATE WAS ISSUED~~ PROVIDE FOR COSTS AND ATTORNEY FEES IF THE CHALLENGE WAS FOR AN IMPROPER PURPOSE; 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 ~~MONTANA ADMINISTRATIVE PROCEDURE ACT,~~ AIR QUALITY LAWS, ~~THE ISSUANCE OF A PERMIT UNDER THE WATER QUALITY LAWS, NATURAL STREAMBED AND LAND PRESERVATION ACT, HAZARDOUS WASTE MANAGEMENT FACILITY LAWS, COAL AND URANIUM MINE RECLAMATION LAWS, AND METAL MINE RECLAMATION LAWS~~ THE ISSUANCE OF AN AMENDMENT UNDER THE OPENCUT MINING RECLAMATION LAWS, THE ISSUANCE OF A LICENSE OR PERMIT UNDER THE METAL MINE RECLAMATION LAWS, A PETITION FOR REVIEW CHALLENGING A LICENSING OR PERMITTING DECISION UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AN ARBITRATION ACTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975, ANY ACTION UNDER THE HAZARDOUS WASTE FACILITIES LAWS OR THE MONTANA ENVIRONMENTAL POLICY ACT, ENTRY AND INSPECTION UNDER THE COAL AND URANIUM MINE RECLAMATION 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~~ SUBJECT TO THE PERMIT, PETITION FOR REVIEW, AMENDMENT, LICENSE, ARBITRATION, ACTION, CERTIFICATE, OR INSPECTION 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~~ CERTAIN PERSONS MAY NOT CONDUCT ~~INVESTIGATIONS OR~~ REMEDIAL ACTIONS CONCERNING CLEANUP ACTIVITIES ~~ON ANY SITE~~ AT ANY FACILITY THAT IS SUBJECT TO AN ADMINISTRATIVE OR JUDICIAL ORDER; AMENDING SECTIONS 2-4-702, 2-4-704, 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, 75-7-121, 75-10-202, 75-10-402, ~~75-10-703,~~ 75-10-420, 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, 82-4-239, 82-4-252, 82-4-301, 82-4-349, 82-4-402, 82-4-427, 82-4-436, AND 87-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND, AN APPLICABILITY DATE, AND A TERMINATION DATE~~ AND A RETROACTIVE 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 2-4-702, MCA, IS AMENDED TO READ:

"2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are

based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends ~~he is~~ to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315, 27-19-316, and 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be ~~taxed~~ required by the court ~~for~~ to pay the additional costs. The court may require or permit subsequent corrections or additions to the record."

NEW SECTION. **SECTION 2. DETERMINATION OF CONSTITUTIONALITY.** IN ANY ACTION FILED IN DISTRICT COURT INVOKING THE COURT'S ORIGINAL JURISDICTION TO CHALLENGE THE CONSTITUTIONALITY OF A LICENSING OR PERMITTING DECISION MADE PURSUANT TO TITLE 75 OR TITLE 82 OR ACTIVITIES TAKEN PURSUANT TO A LICENSE OR PERMIT ISSUED UNDER TITLE 75 OR TITLE 82, THE PLAINTIFF SHALL FIRST ESTABLISH THE UNCONSTITUTIONALITY OF THE UNDERLYING STATUTE.

SECTION 3. SECTION 2-4-704, MCA, IS AMENDED TO READ:

"2-4-704. Standards of review. (1) The review ~~shall~~ must be conducted by the court without a jury and ~~shall~~ must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof ~~thereof~~ of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on

questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of constitutional or statutory provisions;

(ii) in excess of the statutory authority of the agency;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute."

Section 4. Section 50-40-102, MCA, is amended to read:

"50-40-102. ~~Purpose~~ ~~Findings~~ INTENT -- 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART PROVIDE ADEQUATE REMEDIES FOR THE PROTECTION OF THE ENVIRONMENTAL LIFE SUPPORT SYSTEM. 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 5. Section 75-1-102, MCA, is amended to read:

"75-1-102. ~~Purpose Findings~~ INTENT -- 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. It~~ THE MONTANA ENVIRONMENTAL POLICY ACT IS PROCEDURAL, AND IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF PARTS 1 THROUGH 3 OF THIS CHAPTER PROVIDE FOR THE 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~~ REVIEW OF STATE ACTIONS IN ORDER TO ENSURE THAT ENVIRONMENTAL ATTRIBUTES ARE FULLY CONSIDERED.

(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 6. 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, BY THE LEGISLATURE ~~AND THE COURTS,~~ in order to protect the public health, safety, and welfare."

Section 7. Section 75-2-102, MCA, is amended to read:

"75-2-102. ~~Policy Findings~~ INTENT -- 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF PARTS 1 THROUGH 4 OF THIS CHAPTER 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) 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, BY THE LEGISLATURE ~~AND THE COURTS,~~ 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 8. 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~~ 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 JUDICIAL challenge to a permit issued pursuant to this chapter BY A PARTY OTHER THAN THE PERMIT APPLICANT OR PERMITHOLDER must include ~~an action for A PRELIMINARY injunction against~~ the party to whom the permit was issued UNLESS OTHERWISE AGREED TO BY THE PERMIT APPLICANT OR PERMITHOLDER. ALL JUDICIAL CHALLENGES OF PERMITS FOR PROJECTS WITH A PROJECT COST, AS DETERMINED UNDER 75-1-203, OF MORE THAN $1 MILLION MUST HAVE PRECEDENCE OVER ANY CIVIL CAUSE OF A DIFFERENT NATURE PENDING IN THAT COURT. IF THE COURT DETERMINES THAT THE CHALLENGE WAS WITHOUT MERIT OR WAS FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS, TO CAUSE UNNECESSARY DELAY, OR TO IMPOSE NEEDLESS OR INCREASED COST IN LITIGATION, THE COURT MAY AWARD ATTORNEY FEES AND COSTS INCURRED IN DEFENDING THE ACTION.

(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 7.** 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 9. 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 10. Section 75-5-102, MCA, is amended to read:

"75-5-102. ~~Purpose~~ Findings INTENT -- 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS CHAPTER 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. 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 11. Section 75-7-102, MCA, is amended to read:

"75-7-102. ~~Policy~~ Findings ~~-~~ INTENT -- 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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) 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 12. SECTION 75-7-121, MCA, IS AMENDED TO READ:

"75-7-121. Review. Any review of final action by the supervisors under 75-7-112 or 75-7-113 must be by arbitration. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, and must be brought in the county where the action is proposed to occur."

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

"75-10-202. Legislative INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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) 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~~ INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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.

~~(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 15. SECTION 75-10-420, MCA, IS AMENDED TO READ:

"75-10-420. Venue for legal actions. All legal actions affecting hazardous waste management facilities in the state must be brought in the county in which the facility is located or is proposed to be located."

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

"75-10-706. Purpose ~~-- findings~~ INTENT. (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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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.

(3) A person who is not subject to an administrative or judicial order may not conduct any ~~investigation or~~ remedial action ~~on~~ AT any ~~site~~ FACILITY 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~~ IS INTENDED TO PROVIDE FOR THE PROTECTION OF THE ENVIRONMENTAL LIFE SUPPORT SYSTEM FROM DEGRADATION AND TO PREVENT UNREASONABLE DEPLETION AND DEGRADATION OF NATURAL RESOURCES."

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

"75-10-902. ~~Purpose Findings~~ INTENT -- 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THE MEGALANDFILL SITING ACT 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.

~~(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~~ INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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.

~~(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~~ INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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.

~~(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~~ INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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) 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, INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS CHAPTER 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.

~~(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).~~

(7) ALL JUDICIAL CHALLENGES OF CERTIFICATES FOR PROJECTS WITH A PROJECT COST, AS DETERMINED UNDER 75-1-203, OF MORE THAN $1 MILLION MUST HAVE PRECEDENCE OVER ANY CIVIL CAUSE OF A DIFFERENT NATURE PENDING IN THAT COURT. IF THE COURT DETERMINES THAT THE CHALLENGE WAS WITHOUT MERIT OR WAS FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS, TO CAUSE UNNECESSARY DELAY, OR TO IMPOSE NEEDLESS OR INCREASED COST IN LITIGATION, THE COURT MAY AWARD ATTORNEY FEES AND COSTS INCURRED IN DEFENDING THE ACTION."

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 JUDICIAL challenge to a certificate issued pursuant to this chapter BY A PARTY OTHER THAN THE CERTIFICATE HOLDER OR APPLICANT must include ~~an action for A PRELIMINARY injunction against~~ the party to whom the certificate was issued as provided in this chapter UNLESS OTHERWISE AGREED TO BY THE CERTIFICATE HOLDER OR APPLICANT. ALL JUDICIAL CHALLENGES OF CERTIFICATES FOR PROJECTS WITH A PROJECT COST, AS DETERMINED UNDER 75-1-203, OF MORE THAN $1 MILLION MUST HAVE PRECEDENCE OVER ANY CIVIL CAUSE OF A DIFFERENT NATURE PENDING IN THAT COURT. IF THE COURT DETERMINES THAT THE CHALLENGE WAS WITHOUT MERIT OR WAS FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS, TO CAUSE UNNECESSARY DELAY, OR TO IMPOSE NEEDLESS OR INCREASED COST IN LITIGATION, THE COURT MAY AWARD ATTORNEY FEES AND COSTS INCURRED IN DEFENDING THE ACTION.

(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 JUDICIAL challenge to a certificate issued pursuant to this chapter BY A PARTY OTHER THAN THE CERTIFICATE HOLDER OR APPLICANT must include ~~an action for A PRELIMINARY injunction against~~ the party to whom the certificate was issued as provided in this chapter UNLESS OTHERWISE AGREED TO BY THE CERTIFICATE HOLDER

OR APPLICANT. ALL JUDICIAL CHALLENGES OF CERTIFICATES FOR PROJECTS WITH A PROJECT COST, AS DETERMINED UNDER 75-1-203, OF MORE THAN $1 MILLION MUST HAVE PRECEDENCE OVER ANY CIVIL CAUSE OF A DIFFERENT NATURE PENDING IN THAT COURT. IF THE COURT DETERMINES THAT THE CHALLENGE WAS WITHOUT MERIT OR WAS FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS, TO CAUSE UNNECESSARY DELAY, OR TO IMPOSE NEEDLESS OR INCREASED COST IN LITIGATION, THE COURT MAY AWARD ATTORNEY FEES AND COSTS INCURRED IN DEFENDING THE ACTION."

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

"76-6-102. ~~Findings~~ INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS CHAPTER 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) 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~~ INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS CHAPTER 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.

~~(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 INTENT -- 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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.

~~(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~~ INTENT -- 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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.

~~(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, archaeologic, 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 82-4-239, MCA, IS AMENDED TO READ:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of

fact that:

(i) land or water resources have been adversely affected by past coal-mining practices;

(ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by ~~sections 1 and 2,~~ Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises

constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

SECTION 30. SECTION 82-4-252, MCA, IS AMENDED TO READ:

"82-4-252. Mandamus. (1) A resident of this state or any person having an interest ~~which~~ that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that ~~shall~~ must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest ~~which~~ that is or may be adversely affected may bring an action of mandamus ~~in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or~~ in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced,

shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform ~~his~~ the officer's or employee's duties. If ~~he~~ the officer or employee fails to ~~do so~~ obey the order, the public officer or employee ~~shall~~ must be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on ~~his~~ the person's own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued ~~hereunder~~ under this part. However, ~~no such~~ the action may not commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued ~~hereunder~~ under this part. Any person may intervene as a matter of right in ~~any such~~ the civil action. ~~Nothing in this~~ This section ~~restricts~~ does not restrict any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted ~~hereunder~~ under this part or to seek any other relief.

(4) Any person who is injured in ~~his~~ person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages, ~~(~~including reasonable attorney and expert witness fees~~)~~, only in the county in which the strip- or underground-coal-mining operation complained of is located. ~~Nothing in this~~ This subsection ~~affects~~ does not affect the rights established by or limits imposed under ~~chapter 71 of~~ Title 39, chapter 71.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation, ~~(~~including attorney and expert witness fees~~)~~, to any party whenever the court determines ~~such~~ that the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure."

Section 31. Section 82-4-301, MCA, is amended to read:

"82-4-301. Legislative INTENT AND 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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) 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 32. SECTION 82-4-349, MCA, IS AMENDED TO READ:

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

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

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permitholder or applicant must include ~~an action for a preliminary injunction against~~ the party to whom the license or permit was issued unless otherwise agreed to by the license or permitholder or applicant. ALL JUDICIAL CHALLENGES OF LICENSES OR PERMITS FOR PROJECTS WITH A PROJECT COST, AS DETERMINED UNDER 75-1-203, OF MORE THAN $1 MILLION MUST HAVE PRECEDENCE OVER ANY CIVIL CAUSE OF A DIFFERENT NATURE PENDING IN THAT COURT. IF THE COURT DETERMINES THAT THE CHALLENGE WAS WITHOUT MERIT OR WAS FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS, TO CAUSE UNNECESSARY DELAY, OR TO IMPOSE NEEDLESS OR INCREASED COST IN LITIGATION, THE COURT MAY AWARD ATTORNEY FEES AND COSTS INCURRED IN DEFENDING THE ACTION."

Section 33. Section 82-4-402, MCA, is amended to read:

"82-4-402. ~~Policy~~ Findings INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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) 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 34. SECTION 82-4-427, MCA, IS AMENDED TO READ:

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

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

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

(4) A judicial challenge to a permit issued pursuant to this part by a party other than the permitholder or applicant must include ~~an action for a preliminary injunction against~~ the party to whom the permit was issued unless otherwise agreed to by the permitholder or applicant. ALL JUDICIAL CHALLENGES OF PERMITS FOR PROJECTS WITH A PROJECT COST, AS DETERMINED UNDER 75-1-203, OF MORE THAN $1 MILLION MUST HAVE PRECEDENCE OVER ANY CIVIL CAUSE OF A DIFFERENT NATURE PENDING IN THAT COURT. IF THE COURT DETERMINES THAT THE CHALLENGE WAS

WITHOUT MERIT OR WAS FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS, TO CAUSE UNNECESSARY DELAY, OR TO IMPOSE NEEDLESS OR INCREASED COST IN LITIGATION, THE COURT MAY AWARD ATTORNEY FEES AND COSTS INCURRED IN DEFENDING THE ACTION."

SECTION 35. SECTION 82-4-436, MCA, IS AMENDED TO READ:

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

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

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

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

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

(c) the text of the proposed amendment.

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

(5) If the operator does not appeal the proposed amendment, the amendment becomes effective and enforceable 15 days after the operator receives the notification.

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

(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include ~~an action for a preliminary injunction against~~ the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant. ALL JUDICIAL

CHALLENGES OF AMENDMENTS FOR PROJECTS WITH A PROJECT COST, AS DETERMINED UNDER 75-1-203, OF MORE THAN $1 MILLION MUST HAVE PRECEDENCE OVER ANY CIVIL CAUSE OF A DIFFERENT NATURE PENDING IN THAT COURT. IF THE COURT DETERMINES THAT THE CHALLENGE WAS WITHOUT MERIT OR WAS FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS, TO CAUSE UNNECESSARY DELAY, OR TO IMPOSE NEEDLESS OR INCREASED COST IN LITIGATION, THE COURT MAY AWARD ATTORNEY FEES AND COSTS INCURRED IN DEFENDING THE ACTION."

Section 36. Section 87-5-103, MCA, is amended to read:

"87-5-103. Legislative INTENT, 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.~~ IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF THIS PART 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) 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 37. 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 IS PROPOSED TO OCCUR OR will occur. If an activity IS PROPOSED TO OCCUR OR will occur in more than one county, the proceeding may be brought in any of the counties in which the activity IS PROPOSED TO OCCUR OR will occur.

NEW SECTION. **Section 38. Codification instruction.** (1) [Section ~~32~~ ~~36~~ 37] 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~~ ~~36~~ 37].

(2) [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 82 AND TITLE 75, AND THE PROVISIONS OF TITLE 82 AND TITLE 75 APPLY TO [SECTION 2].

NEW SECTION. **SECTION 39. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 40. Effective date.** [This act] is effective on passage and approval.

~~NEW SECTION. **Section 40. 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].~~

~~NEW SECTION. **SECTION 41. TERMINATION.** [SECTION 7] TERMINATES JULY 1, 2005.~~

NEW SECTION. **SECTION 41. RETROACTIVE APPLICABILITY.** [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO ACTIONS FOR JUDICIAL REVIEW OR OTHER CAUSES OF ACTION CHALLENGING THE ISSUANCE OF A PERMIT, PETITION FOR REVIEW, AMENDMENT, LICENSE, ARBITRATION, ACTION, CERTIFICATE, OR INSPECTION THAT ARE PENDING BUT NOT YET DECIDED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

- END -