

SENATE BILL NO. 92

INTRODUCED BY A. OLSON

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; STREAMLINING PERMIT APPLICATION REQUIREMENTS; CLARIFYING REQUIREMENTS FOR A COAL PROSPECTING PERMIT AND FOR REPLACEMENT OF UNDERGROUND WATER SOURCES; PROVIDING FOR CHALLENGES TO OWNERSHIP AND CONTROL LISTINGS; AND AMENDING SECTIONS 82-4-222, 82-4-226, 82-4-227, AND 82-4-253, MCA."

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

Section 1. Section 82-4-222, MCA, is amended to read:

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

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

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

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

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

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

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

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner,

1 director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class
2 of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

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

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

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

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

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

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

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

10 (i) whether adverse impacts may occur to the hydrologic balance;

11 (ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of
12 ground water or surface water supplies;

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

16 (iv) what impact the operation will have on:

17 (A) sediment yields from the disturbed area;

18 (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local
19 impact;

20 (C) flooding or streamflow alteration;

21 (D) ground water and surface water availability; and

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

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

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

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

1 (j) show the location of test boring holes;

2 (k) show the surface location lines of any geologic cross sections that have been submitted;

3 (l) show a listing of plant varieties encountered in the area to be affected and their relative dominance
4 in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring
5 per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants,
6 including but not limited to grasses, shrubs, legumes, forbs, and trees; and

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

10 ~~(n)~~(m) contain other or further information as the department may require.

11 (3) If the department finds that the probable total annual production at all locations of any strip-mining
12 or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable
13 hydrologic consequences that the department requires and the statement of result of test borings or core
14 samplings must, upon written request of the operator, be performed by a qualified public or private laboratory
15 designated by the department. The department shall assume the cost of the determination and statement to the
16 extent that it has received funds for this purpose.

17 (4) In addition to the information and maps required by this section, each application for a permit must
18 be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance,
19 and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction,
20 topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which
21 proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must
22 address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is
23 anticipated that individual permits will be sought.

24 (5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by
25 an insurance company authorized to do business in the state, certifying that the applicant has in force for the
26 strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability
27 insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements.
28 This policy must provide for personal injury and property damage protection in an amount adequate to
29 compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation
30 operations, including use of explosives, and entitled to compensation under applicable provisions of state law.

1 The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until
2 all reclamation operations have been completed.

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

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

8 (8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the
9 applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which
10 the major portion of mining is proposed to occur or at another accessible public office or facility approved by the
11 department."
12

13 **Section 2.** Section 82-4-226, MCA, is amended to read:

14 **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (7), prospecting by any person
15 on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid
16 prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued
17 until the person submits an application, the application is examined, amended if necessary, and approved by the
18 department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done
19 in conformity with the requirements of this part.

20 (2) ~~Except for an application filed pursuant to subsection (8), an~~ An application for a prospecting permit
21 filed pursuant to subsection (1) must be made in writing, notarized, and submitted to the department ~~in duplicate~~
22 upon forms prepared and furnished by it. The application must include among other things a prospecting map
23 and a prospecting reclamation plan of substantially the same character as required for a surface-mining or
24 underground-mining map and reclamation plan under this part. The department shall determine by rules the
25 precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by
26 means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing
27 aquifers, and other information that may be required by the department. The applicant shall state what types of
28 prospecting and excavating techniques will be employed on the affected land. The application must also include
29 any other or further information that the department may require.

30 (3) Before the department gives final approval to the prospecting permit application, the applicant shall

1 file with the department a reclamation and revegetation bond in a form and in an amount as determined in the
2 same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

3 (4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the
4 area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or
5 underground-mining permit, the department may permit the postponement of the reclamation of the acreage
6 prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for
7 a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a
8 prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly
9 reclaimed.

10 (5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in
11 the same manner as strip-mining or underground-mining permits under this part.

12 (6) The holder of the prospecting permit shall file with the department the same progress reports, maps,
13 and revegetation progress reports as are required of strip-mining or underground-mining operators under this
14 part.

15 (7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to
16 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a
17 mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through
18 (6). ~~In addition, coal prospecting that is conducted to determine the location, quality, or quantity of a mineral
19 deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does
20 not substantially disturb the natural land surface is not subject to subsections (1) through (6). However, except
21 for a prospecting operation for which a permit is required by subsection (7)(b); a person who conducts
22 prospecting described in this subsection (7)(a) shall file with the department a notice of intent to prospect that
23 contains the information required by the department before commencing prospecting operations. If this
24 prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the
25 performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that
26 remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.~~

27 (b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area
28 designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not
29 substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to
30 subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to

1 subsection (8).

2 (ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use
3 of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial
4 disturbance.

5 (8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

6 (i) the name, address, and telephone number of the person who seeks to prospect;

7 (ii) the name, address, and telephone number of the person's representative who will be present at and
8 responsible for conducting the prospecting activities;

9 (iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of
10 1:24,000 or greater showing:

11 (A) the general location of drill holes and trenches;

12 (B) existing and proposed roads;

13 (C) occupied dwellings;

14 (D) topographic features;

15 (E) bodies of water; and

16 (F) pipelines;

17 (iv) a copy of the documents upon which the applicant bases its legal right to prospect, including
18 documentation that the owners of the land affected have been notified and understand that the department will
19 make investigations and inspections to ensure compliance;

20 (v) a statement of the period of intended prospecting; and

21 (vi) a description of the method of prospecting to be used and the practices that will be followed to protect
22 the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance with rules
23 adopted by the board.

24 (b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing
25 as to whether the application is complete and preliminarily acceptable. If the department determines that the
26 application is not complete or not preliminarily acceptable, the department shall include a detailed identification
27 of information necessary to cure the deficiency.

28 (c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the
29 department shall review the response and notify the person as to whether the application is complete and
30 preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable,

1 the department shall notify the person in writing and include a detailed identification of information necessary to
2 make the application complete and preliminarily acceptable.

3 (d) When the department determines that the application is complete and preliminarily acceptable, the
4 department shall notify the applicant in writing. The notification must include the amount of bond that is required
5 to be posted in order for the permit to be issued.

6 (e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place
7 an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice
8 must describe the application and a place in the locality where the public may examine the application and must
9 notify the public that it may submit written comments by delivering or mailing them to the department within 10
10 days following publication of the notice.

11 (f) After close of the public comment period, the department shall notify the applicant as to whether the
12 application is acceptable. The department shall issue the notification within 5 working days of the close of the
13 comment period if no comments are received and within 10 working days if comments are received. In the notice
14 of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

15 (g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."
16

17 **Section 3.** Section 82-4-227, MCA, is amended to read:

18 **"82-4-227. Refusal of permit -- applicant violator system.** (1) An application for a prospecting,
19 strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on
20 the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the
21 operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and
22 rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization,
23 water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out
24 consistently with the purpose of this part. The applicant for a permit or major revision has the burden of
25 establishing that the application is in compliance with this part and the rules adopted under it.

26 (2) The department may not approve the application for a prospecting, strip-mining, or
27 underground-mining permit when the area of land described in the application includes land that has special,
28 exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect
29 the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique
30 characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses

1 special, exceptional, critical, or unique:

2 (a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

3 (b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former
4 ecological role in the reasonably foreseeable future;

5 (c) ecological importance, in the sense that the particular land has such a strong influence on the total
6 ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of
7 unpredictable scope or dimensions; or

8 (d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational
9 significance. In applying the provisions of this subsection (d), particular attention should be paid to the inadequate
10 preservation previously accorded Plains Indian history and culture.

11 (3) The department may not approve an application for a strip- or underground-coal-mining permit or
12 major revision unless the application affirmatively demonstrates that:

13 (a) the assessment of the probable cumulative impact of all anticipated mining in the area on the
14 hydrologic balance has been made by the department and the proposed operation of the mining operation has
15 been designed to prevent material damage to the hydrologic balance outside the permit area; and

16 (b) the proposed strip- or underground-coal-mining operation would not:

17 (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally
18 subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and
19 excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded,
20 it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

21 (ii) materially damage the quantity or quality of water in surface water or underground water systems that
22 supply the valley floors described in subsection (3)(b)(i).

23 (4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year
24 preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within
25 or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or
26 underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined
27 under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner
28 or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law
29 95-87.

30 (5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit

1 to mine coal on the prime farmland unless it finds in writing that the applicant:

2 (i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield
3 equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of
4 management; and

5 (ii) can meet the soil reconstruction standards of 82-4-232(3).

6 (b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions
7 or renewals of the permit or to any existing strip- or underground-mining operations for which a permit was issued
8 prior to August 3, 1977.

9 (6) If the department finds that the overburden on any part of the area of land described in the application
10 for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar
11 type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds,
12 subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of
13 the land described in the application upon which the overburden exists. The burden is on the applicant to
14 demonstrate that any area should not be deleted under this subsection.

15 (7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school,
16 church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the
17 department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application
18 before it can be approved. Strip- or underground-coal-mining may not be allowed:

19 (a) within 300 feet of an occupied dwelling, unless waived by the owner;

20 (b) within 300 feet of any public building, school, church, community, or institutional building, or public
21 park;

22 (c) within 100 feet of a cemetery;

23 (d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads
24 or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area
25 affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality,
26 a written finding is made that the interests of the public and the landowners affected will be protected.

27 (8) ~~Strip-~~ Strip-mining or underground-mining may not be conducted within 500 feet of active or
28 abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners.
29 However, the department shall permit an operator to mine near, through, or partially through an abandoned
30 underground mine or closer to an active underground mine if:

1 (a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine
2 activities are jointly approved by the department and the regulatory authority concerned with the health and safety
3 of underground miners; and

4 (b) the operations will result in improved resource recovery, abatement of water pollution, or elimination
5 of hazards to the health and safety of the public.

6 (9) The department may not approve an application for a strip- or underground-coal-mining operation
7 if the area proposed to be mined is included:

8 (a) within an area designated unsuitable for strip or underground coal mining; or

9 (b) within an area under review for this designation under an administrative proceeding, unless in an area
10 as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit
11 application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial
12 commitments in relation to the operation for which the operator is applying for a permit.

13 (10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued
14 unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will
15 not occur. The department may require the applicant to submit any information it considers necessary for review
16 of the coal conservation plan.

17 (11) Whenever information available to the department indicates that a strip- or underground-coal-mining
18 operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is
19 currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended,
20 or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining
21 to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit
22 or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has
23 been corrected or is in the process of being corrected to the satisfaction of the administering agency.

24 (12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than
25 an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls
26 any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law
27 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration
28 of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the
29 provisions of this part.

30 (13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that

1 existed as of August 3, 1977, may be conducted:

2 (a) on lands within the boundaries of units of the national park system, the national wildlife refuge
3 system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers
4 system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or
5 study river corridors established in any guidelines issued under that act, or national recreation areas designated
6 by an act of congress; or

7 (b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR
8 761.11(b) and the procedures of 30 CFR 761.13.

9 (14) (a) A person who is listed by the department in the applicant violator system maintained by the office
10 of surface mining reclamation and enforcement of the U.S. department of the interior pursuant to the Surface
11 Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq., as owning or controlling a strip-mining or
12 underground-mining operation may challenge the ownership or control listing by filing a written request with the
13 department for review of the listing. In the request, the person must include a written explanation of the basis for
14 the challenge and any evidence the person wishes the department to consider. The department shall provide a
15 written response within 60 days of receipt of the request for review.

16 (b) Within 30 days of receipt of the response pursuant to (14)(a), the person who is listed may request
17 a hearing before the board by submitting to the board a written request for hearing that states the reason for the
18 request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6,
19 apply to the hearing."

20

21 **Section 4.** Section 82-4-253, MCA, is amended to read:

22 **"82-4-253. Suit for damage to water supply.** (1) An owner of an interest in real property who obtains
23 all or part of a supply of water for domestic, agricultural, industrial, or other legitimate use from an underground
24 source other than a subterranean stream having a permanent, distinct, and known channel may sue an operator
25 to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from
26 strip mining or underground mining.

27 (2) Prima facie evidence of injury in a suit under this section is established by the removal of coal or
28 disruption of overlying aquifer from designated ground water areas as prescribed in Title 85, chapter 2, part 5.
29 If the area is not a designated ground water area, a showing that the coal or overlying strata is an aquifer in that
30 geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden

1 to the defendant (operator) to show that the plaintiff's (owner's) water supply was not injured thereby.

2 (3) An owner of water rights adversely affected may file a complaint detailing the loss of water in quality
3 and quantity with the department. Upon receipt of this complaint the department shall:

4 (a) investigate the complaint using all available information including monitoring data gathered at the
5 mine site;

6 (b) require the defendant (operator) to install monitoring wells or other practices that may be needed to
7 determine the cause of water loss, if there is a loss, in terms of quantity or quality;

8 (c) issue within 90 days a written finding specifying the cause of the water loss, if there is a loss, in terms
9 of quantity or quality;

10 (d) order the mining operator in compliance with chapter 2 of Title 85 to replace the water immediately
11 on a temporary basis to provide the needed water and within a reasonable time, replace the water in like quality,
12 quantity, and duration, if the loss is caused by the ~~surface coal mining strip-~~ or underground-coal-mining
13 operation; and

14 (e) order the suspension of the operator's permit for failure to replace the water, until such time as the
15 operator provides substitute water.

16 (4) A servient tract of land is not bound to receive surface water contaminated by strip mining or
17 underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to
18 recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters
19 contaminated by strip mining or underground mining on the dominant tract.

20 (5) This section and 82-4-252 do not create, modify, or affect any right, liability, or remedy other than as
21 expressly provided."

22
23 **NEW SECTION. Section 5. Notification to tribal governments.** The secretary of state shall send a
24 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
25 Chippewa tribe.

26 - END -