

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; STREAMLINING ANNUAL REPORT REQUIREMENTS; PROVIDING FOR CHALLENGES TO OWNERSHIP AND CONTROL LISTINGS; AND AMENDING SECTIONS 82-4-222, 82-4-226, 82-4-227, 82-4-237, 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;



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

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

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

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

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

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

28 (l) the name ~~and date~~ of a ~~daily~~ newspaper of general circulation ~~within the county~~ IN THE LOCALITY OF  
29 THE PROPOSED ACTIVITY in which the applicant will prominently publish at least once a week for 4 successive  
30 weeks after submission of the application an announcement of the applicant's application for a strip-mining or

1 underground-mining permit and a detailed description of the area of land to be affected if a permit is granted; IF  
2 THAT NEWSPAPER IS NOT PUBLISHED IN MONTANA, THE APPLICANT SHALL ALSO PROVIDE THE NAME OF A NEWSPAPER OF  
3 GENERAL CIRCULATION IN THE COUNTY IN WHICH THE PROPOSED OPERATION IS LOCATED THAT IS PUBLISHED IN MONTANA  
4 IN WHICH THE APPLICANT WILL PUBLISH AN ANNOUNCEMENT AND DESCRIPTION IN ACCORDANCE WITH THIS SUBSECTION.

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

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

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

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

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

21 (A) sediment yields from the disturbed area;

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

24 (C) flooding or streamflow alteration;

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

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

28 (n) a plan for monitoring ground water and surface water, based upon the determination of probable  
29 hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of  
30 parameters that relate to the availability and suitability of ground water and surface water for current and

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

1 waterways used for drainage, and the streams or tributaries receiving the discharge.

2 (g) show the proposed location of waste or refuse area;

3 (h) show the proposed location of temporary subsoil and topsoil storage area;

4 (i) show the proposed location of all facilities;

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

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

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

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

14 (M) BE CERTIFIED BY A PROFESSIONAL ENGINEER OR PROFESSIONAL LAND SURVEYOR LICENSED AS PROVIDED  
15 BY TITLE 37, CHAPTER 67; AND

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

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

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

30 (5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by

1 an insurance company authorized to do business in the state, certifying that the applicant has in force for the  
2 strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability  
3 insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements.  
4 This policy must provide for personal injury and property damage protection in an amount adequate to  
5 compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation  
6 operations, including use of explosives, and entitled to compensation under applicable provisions of state law.  
7 The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until  
8 all reclamation operations have been completed.

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

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

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

18

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

20 **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (7), prospecting by any person  
21 on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid  
22 prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued  
23 until the person submits an application, the application is examined, amended if necessary, and approved by the  
24 department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done  
25 in conformity with the requirements of this part.

26 (2) ~~Except for an application filed pursuant to subsection (8), an~~ An application for a prospecting permit  
27 filed pursuant to subsection (1) must be made in writing, notarized, and submitted to the department in ~~duplicate~~  
28 upon forms prepared and furnished by it. The application must include among other things a prospecting map  
29 and a prospecting reclamation plan of substantially the same character as required for a surface-mining or  
30 underground-mining map and reclamation plan under this part. The department shall determine by rules the

1 precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by  
2 means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing  
3 aquifers, and other information that may be required by the department. The applicant shall state what types of  
4 prospecting and excavating techniques will be employed on the affected land. The application must also include  
5 any other or further information that the department may require.

6 (3) Before the department gives final approval to the prospecting permit application, the applicant shall  
7 file with the department a reclamation and revegetation bond in a form and in an amount as determined in the  
8 same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

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

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

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

21 (7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to  
22 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a  
23 mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through  
24 (6). ~~In addition, coal prospecting that is conducted to determine the location, quality, or quantity of a mineral  
25 deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does  
26 not substantially disturb the natural land surface is not subject to subsections (1) through (6). However, except  
27 for a prospecting operation for which a permit is required by subsection (7)(b);~~ a person who conducts  
28 prospecting described in this subsection (7)(a) shall file with the department a notice of intent to prospect that  
29 contains the information required by the department before commencing prospecting operations. If this  
30 prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the

1 performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that  
2 remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

3 (b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area  
4 designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not  
5 substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to  
6 subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to  
7 subsection (8).

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

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

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

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

15 (iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of  
16 1:24,000 or greater showing:

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

18 (B) existing and proposed roads;

19 (C) occupied dwellings;

20 (D) topographic features;

21 (E) bodies of water; and

22 (F) pipelines;

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

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

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

30 (b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing



1 as to whether the application is complete and preliminarily acceptable. If the department determines that the  
2 application is not complete or not preliminarily acceptable, the department shall include a detailed identification  
3 of information necessary to cure the deficiency.

4 (c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the  
5 department shall review the response and notify the person as to whether the application is complete and  
6 preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable,  
7 the department shall notify the person in writing and include a detailed identification of information necessary to  
8 make the application complete and preliminarily acceptable.

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

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

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

21 (g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."  
22

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

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

1 establishing that the application is in compliance with this part and the rules adopted under it.

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

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

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

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

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

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

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

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

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

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

29 (4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year  
30 preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within

1 or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or  
2 underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined  
3 under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner  
4 or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law  
5 95-87.

6 (5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit  
7 to mine coal on the prime farmland unless it finds in writing that the applicant:

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

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

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

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

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

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

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

28 (c) within 100 feet of a cemetery;

29 (d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads  
30 or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area

1 affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality,  
2 a written finding is made that the interests of the public and the landowners affected will be protected.

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

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

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

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

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

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

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

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

30 (12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than

1 an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls  
 2 any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law  
 3 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration  
 4 of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the  
 5 provisions of this part.

6 (13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that  
 7 existed as of August 3, 1977, may be conducted:

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

13 (b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR  
 14 761.11(b) and the procedures of 30 CFR 761.13.

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

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

26

27 **SECTION 4. SECTION 82-4-237, MCA, IS AMENDED TO READ:**

28 **"82-4-237. Operator to file annual reports.** (1) An operator shall file an annual report with the  
 29 department ~~within 30 days of the anniversary date of each permit. In lieu of an annual report for each permit, the~~  
 30 ~~department may allow the operator to file an annual report for each operation on a date determined by the~~

1 department. ~~Included within an~~ An annual report ~~shall be~~ must include:

2 (a) the name and address of the operator and permit number or numbers; and

3 (b) a report ~~in such~~ with detail ~~as the~~ required by the department ~~shall require~~, supplemented with maps,  
4 cross sections, or other material indicating the extent to which mining operations have been carried out, the  
5 progress of all reclamation work, including the type of planting or seeding, mixture and amount of seed, date of  
6 planting or seeding, and area of land planted, ~~the extent to which expectations and predictions made in the~~  
7 ~~original application have been fulfilled and any deviation therefrom~~; and the number of acres affected; ~~and~~

8 ~~—— (c) a revised schedule or timetable of operations and reclamation and an estimate of the number of acres~~  
9 ~~to be affected during the next 1-year period.~~

10 (2) Upon receipt of the annual report, the department may ~~make further inquiry and request further~~  
11 additional information and, if it does so, shall allow a reasonable opportunity for the operator to respond to the  
12 request.

13 (3) When ~~problem situations~~ problems are revealed by review of new information or as a result of field  
14 inspections, the department may order ~~such~~ necessary changes in the mining and reclamation plans ~~as are~~  
15 necessary to insure ensure compliance with this part."

16

17 **Section 5.** Section 82-4-253, MCA, is amended to read:

18 **"82-4-253. Suit for damage to water supply.** (1) An owner of an interest in real property who obtains  
19 all or part of a supply of water for domestic, agricultural, industrial, or other legitimate use from an underground  
20 source other than a subterranean stream having a permanent, distinct, and known channel may sue an operator  
21 to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from  
22 strip mining or underground mining.

23 (2) Prima facie evidence of injury in a suit under this section is established by the removal of coal or  
24 disruption of overlying aquifer from designated ground water areas as prescribed in Title 85, chapter 2, part 5.  
25 If the area is not a designated ground water area, a showing that the coal or overlying strata is an aquifer in that  
26 geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden  
27 to the defendant (operator) to show that the plaintiff's (owner's) water supply was not injured thereby.

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

30 (a) investigate the complaint using all available information including monitoring data gathered at the

1 mine site;

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

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

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

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

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

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

18

19 NEW SECTION. **Section 6. Notification to tribal governments.** The secretary of state shall send a  
20 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
21 Chippewa tribe.

22

- END -