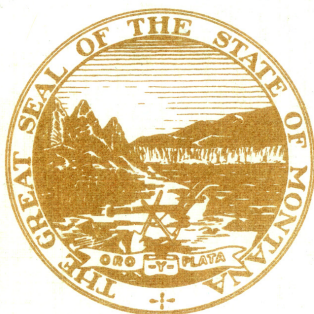
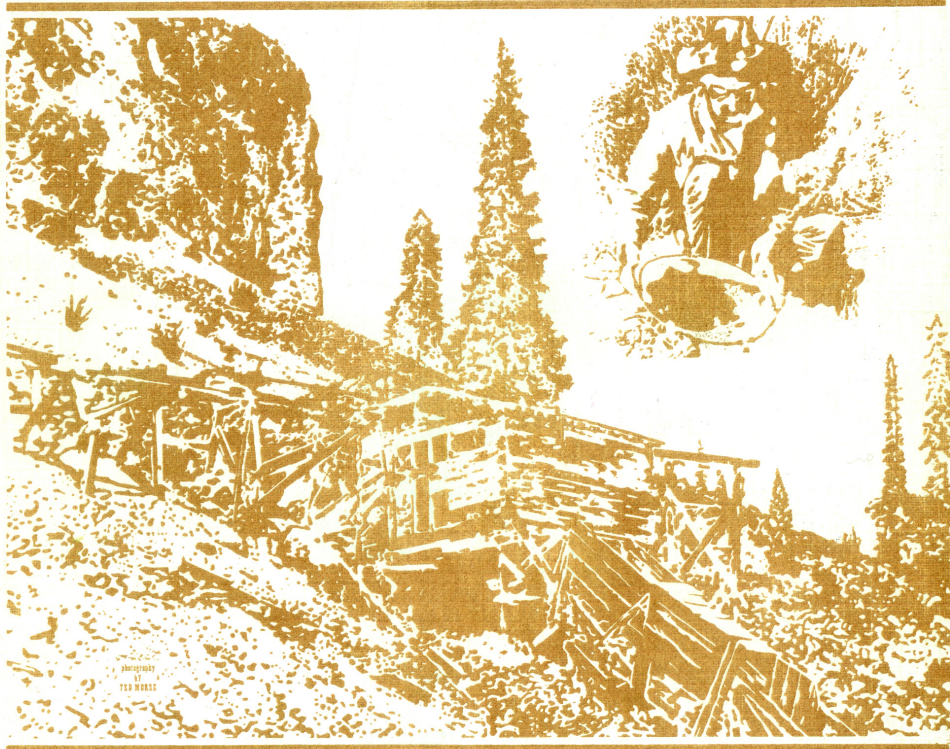


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MINING CODES OF MONTANA (ANNOTATED)

**compiled by
Koehler S. Stout**



Bulletin 113

1980

**Montana Bureau of Mines and Geology
A Department of
Montana College of Mineral Science and Technology**

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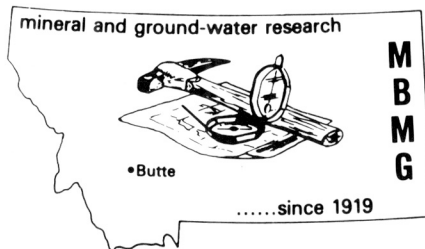
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Koehler S. Stout



1980



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Cover: *Gold Mine in the Sky* by Ted Morse.

Preface

The Montana Bureau of Mines and Geology receives many requests for copies of laws and codes that govern mining in the State of Montana. The Montana Legislature has been very active in the last eight years in passing legislation that has an impact on mining. The federal government has also been very active in passing laws, and many departments of the government have also passed rules and regulations that impact mining.

This bulletin is an attempt to gather under one cover the applicable laws which regulate the location and development of mineral deposits in the State of Montana. The laws are rather extensive but it must be emphasized that these are only the parts of the laws which apply to the location and the requirements for operation of mines. They do not cover the legislative powers and the promulgated rules and regulations under which the various agencies are to act. The selection of the laws was made to help a locator or mine operator conform to present laws and regulations.

The Montana laws are reprinted from Chapters 1-4, Title 82, volume 13, Montana Code Annotated, 1979, courtesy Montana Legislative Council. The federal citations are from Bureau of Land Management circulars and from U.S.D.A. Forest Service Current Information Report No. 14, January 1975. For more complete coverage of the total law, as it applies to all business operations, an attorney should be consulted as the laws cited here apply only to the mining aspects.

The rules and regulations cited in Chapters 1, 3, 4 and parts of Chapter 2 apply to all mining in Montana whether on patented or unpatented ground. They also apply to all private land where minerals are vested in the landowner. The only exceptions are contained in the chapters themselves.

Chapter 2 covers location of mining and mill sites on open unappropriated public land of the United States under the 1872 mining law as amended. Note on the following page the requirement for filing a copy of the certificate of location and a copy of the annual assessment work in the Bureau of Land Management office in Billings.

If a mining claim is located in a national forest, the rules and regulations in Appendix A should be consulted. The Bureau of Land Management will soon publish its own rules and regulations and they should also be consulted.

Coal mining is contained in Chapter 3; however, coal is not a locatable mineral. Uranium and bentonite are locatable minerals, and those codes are contained in Chapters 2 and 4. The small miner will be interested in Section 82-4-305 because of the important exclusion. However, this exclusion **does not** apply to the Forest Service Rules and Regulations in Appendix A (if mining in a national forest).

Montana recognizes a mining partnership and the law deviates in some respect with the general laws of partnership. Therefore, Title 35, Chapter 13, Mining partnership of the Montana Code Annotated, 1979, is included as Appendix B.

Koehler S. Stout
Associate Dean, Engineering Division
Montana College of Mineral Science and Technology

Butte
July 1, 1980

ATTENTION

Miners

Claim Owners

Prospectors

(Note: See Section 82-2-102, page 10. The following step is necessary in locating a mining claim by Federal law.)

THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF OCTOBER 21, 1976, REQUIRES THAT YOU MUST RECORD YOUR CLAIM WITH THE BUREAU OF LAND MANAGEMENT.

*If you located a mining claim **after October 21, 1976**, on public lands, you **MUST** file a legible copy of your location certificate **no later than 90 days** after the date of location of the claim.*

[Claims located on public lands in Montana, North Dakota or South Dakota must be recorded with the Bureau of Land Management Office at 222 N. 32d St., P. O. Box 30157, Billings, MT 59107.]

IF YOU DO NOT—YOUR CLAIM WILL BE VOID BY LAW

This requirement is in addition to the requirement that the location certificate be filed with the County Clerk and Recorder or the office of local jurisdiction.

THIS NOTICE APPLIES TO MILL SITES AND TUNNEL SITES AS WELL AS LODE AND PLACER CLAIMS.

This applies to claims located within national forests as well as on public lands under the jurisdiction of the Bureau of Land Management.

A \$5.00 filing fee for each claim or site is required and must accompany the location certificate. Checks must be made payable to the Bureau of Land Management.

*The following information **must be supplied**:*

1. Name or number of claim (both, if appropriate).
2. Date of location.
3. Type of claim or site (lode, placer, mill site, tunnel site).
4. Name(s) and current address(es) of present owner(s)—**NOT THE AGENT!**
5. It is necessary that the claimant furnish the approximate location of the claim. The claimant may furnish:
 - (a) township, range, section and quarter section
 - (b) a topographic map published by the U.S. Geological Survey on which the claim is shown. Several claims may be on the same map, providing the identity of each is clearly shown.
 - (c) a narrative or sketch describing the claim with reference by appropriate tie to some topographic, hydrographic or manmade feature.

This recording is required by the Federal Land Policy and Management Act of 1976 (Public Law 94-579, Stat 2743). (See Title 43 Code of Federal Regulations, Subpart 3833.)

Federal Law Requirements on Assessment Work

(Note: See Section 82-2-104, page 12.)

Evidence of Assessment Work or Notice of Intent to Hold for claims located on public lands in Montana, North Dakota or South Dakota must be filed with the Bureau of Land Management Office at 222 N. 32d St., P. O. Box 30157, Billings, MT 59107. Information may be obtained by telephone at (406) 657-6757.

Generally a copy of the notice sent to the County Clerk and Recorder is sufficient for this purpose, and it must be filed by December 31 of each year.

Additional Requirements for Mining on U.S. Forest Service and Bureau of Land Management Lands

(Note: See Section 82-2-306, page 19.)

*(1) If you plan to mine on national forests, your attention is directed to Appendix A. The U.S. Forest Service has rules and regulations on prospecting, exploring and producing minerals from forest lands **in addition to** the rules and regulations of the State of Montana.*

(2) The Bureau of Land Management is in the process of issuing rules and regulations on lands under its jurisdiction, similar to those of the Forest Service. When these rules meet all statutory requirements as to publication, etc., they will also be in effect. Undoubtedly the Bureau of Land Management will furnish copies of those rules and regulations to interested parties.

TITLE 82

MINERALS

Ch.

1. General Provisions.
2. Mining Generally.
3. Coal Mining.
4. Reclamation.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Geophysical Exploration

Section

- 82-1-101. Persons required to comply.
- 82-1-102. Doing business within state — resident agent.
- 82-1-103. Notice of intention to explore.
- 82-1-104. Surety bond — restoration of surface.
- 82-1-105. Exploration permit.
- 82-1-106. County clerk to notify board of issuance of permit — compliance.
- 82-1-107. Permit holder to furnish information to surface user.
- 82-1-108. Filing record of work performed.
- 82-1-109. Enforcement by county attorneys.
- 82-1-110. Penalty.

Part 2 — Cancellation and Forfeiture of Oil, Gas, or Mineral Leases

- 82-1-201. Release of record upon forfeiture of lease.
- 82-1-202. Action to compel release — procedure without court action.
- 82-1-203. Demand for release prior to action.
- 82-1-204. Joinder of plaintiffs in actions concerning oil and gas leases.

Part 3 — Trusts for Unlocatable Mineral Owners

- 82-1-301. Definition.
- 82-1-302. Creation of trust for unlocatable mineral, leasehold, or royalty interest owners.
- 82-1-303. No further liability for petitioner.
- 82-1-304. Administration of the trust.
- 82-1-305. Existing trust for unlocatable mineral, leasehold, and royalty interest owners —
transfer of trustees — penalty.
- 82-1-306. Filing of addresses.

Part 1

Geophysical Exploration

82-1-101. Persons required to comply. A person, firm, or corporation operating individually or through agents within the state of Montana for the purpose of geophysical exploration in which exploration the seismograph is utilized along with explosives for the determination of geophysical data for any purpose whatsoever, and which person, firm, or corporation either through its own employees or by hiring the services of others operates "seismograph crews", as the term is generally known, shall comply with the following provisions of this part; provided, however, that compliance with the provisions of this part by a seismograph crew or its employer shall constitute compliance herewith by that person, firm, or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

History: En. Sec. 1, Ch. 235, L. 1955; R.C.M. 1947, 69-3301.

82-1-102. Doing business within state — resident agent. A person, firm, or corporation shall be deemed to be doing business within the state of Montana when engaged in such geophysical exploration within the boundaries of this state and shall, if not already qualified to do business within this state with a designation of an agent within the state for service of process prior to such time, file with the secretary of state of the state of Montana an authorization, which authorization shall designate a resident agent for the service of process in any action which may be pending in a court in this state, which cause of action may have arisen out of such geophysical exploration.

History: En. Sec. 2, Ch. 235, L. 1955; R.C.M. 1947, 69-3302.

82-1-103. Notice of intention to explore. A person, firm, or corporation desiring to engage in geophysical exploration within the state of Montana shall file a notice of intention to engage in the exploration with the county clerk and recorder in each county in which exploration is to be carried on or engaged in. The notice shall be filed prior to the actual commencement of the exploration.

History: En. Sec. 3, Ch. 235, L. 1955; amd. Sec. 34, Ch. 39, L. 1977; R.C.M. 1947, 69-3303.

82-1-104. Surety bond — restoration of surface. (1) A person, firm, or corporation desiring to engage in such geophysical exploration shall also file with the secretary of state a good and sufficient surety bond in the amount of \$10,000 for a single such geophysical crew or a blanket surety bond in the amount of \$25,000 for all such geophysical crews operating within the state for such person, firm, or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such geophysical exploration.

(2) Unless otherwise agreed as between the owner of the surface and such person, firm, or corporation, it shall be the obligation of such person, firm, or corporation upon completion of exploration to plug all "shot holes" in such a manner as shall be specified by the board of oil and gas conservation

to contain any water within its native strata by replacing all drill cuttings and filling the hole with bentonite mud or cement as required to contain the water and capping the same with an impervious material at least 1 foot in depth, the top of which shall be 4 feet below the surface of the land. The portion of the hole above the cap shall be filled with native material. The person, firm, or corporation shall also restore the surface around the same as near as practicable to its original condition.

(3) The bond shall remain on file with the secretary of state so long as the exploration is carried on or engaged in, plus an additional 5 years thereafter; provided, however, that the aggregate liability of the surety shall in no event exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, firm, or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm, or corporation.

History: En. Sec. 4, Ch. 235, L. 1955; amd. Sec. 1, Ch. 175, L. 1961; amd. Sec. 1, Ch. 272, L. 1977; R.C.M. 1947, 69-3304.

82-1-105. Exploration permit. (1) Upon compliance with the provisions herein contained, namely the filing of a notice of intention to engage in the exploration and a certificate (or photostatic copy thereof) from the secretary of state certifying the name and address of the resident agent for service of process for the person, firm, or corporation desiring to engage in the exploration and certifying that the required surety bond has been filed with the secretary of state, the county clerk and recorder shall issue to the person, firm, or corporation a "geophysical exploration permit".

(2) The permit shall show:

(a) the name of the person, firm, or corporation and principal place of business;

(b) if a firm or corporation, the names and addresses of its officers;

(c) the name and address of the resident agent for service of process for the person, firm, or corporation;

(d) that a notice of intention to engage in geophysical exploration has been duly filed; and

(e) that a good and sufficient surety bond has been filed by the person, firm, or corporation, naming the surety company and giving its address.

(3) The permit shall be signed by the county clerk and recorder or his deputy and bear the official county seal. The permit shall be valid and effective for all geophysical crews of the permittee during the calendar year in which it is issued.

(4) The cost of the permit shall be \$5 per calendar year or any portion thereof for which issued, and the revenues realized therefrom shall go to the county so issuing. Such funds as are realized shall be applied toward payment of the cost of printing the permits, which shall be printed at the county seat, and excesses shall go into the county's general fund.

(5) If printed forms are not available at the time any person, firm, or corporation desires the permit and qualifies for its issuance, typewritten or other form of reproduction of the permit may be used, the fee of \$5 nevertheless shall be paid for its issuance, and this fee shall be disposed of in the same manner.

(6) The permit or a photostatic copy thereof shall be carried by the person or by the agent of the firm or corporation at all times during the period of the geophysical exploration and shall be exhibited upon demand of any county or state official.

History: En. Sec. 5, Ch. 235, L. 1955; amd. Sec. 35, Ch. 39, L. 1977; R.C.M. 1947, 69-3305.

82-1-106. County clerk to notify board of issuance of permit — compliance. (1) The county clerk and recorder of the county in which a permit for geophysical activity is issued will immediately forward notice of the issuance of such permit to the board of oil and gas conservation.

(2) The board shall notify the county clerk and recorder of the county if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the state.

(3) If the board of oil and gas conservation determines that a person, firm, or corporation has violated any provisions of this part, the board shall take necessary action to assure compliance.

History: En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977; R.C.M. 1947, 69-3305.1(1) thru (3).

82-1-107. Permit holder to furnish information to surface user. Before commencing geophysical activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity, and upon request the following information shall also be furnished:

(1) the name and permanent address of the geophysical exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm's;

(2) evidence of a valid permit to engage in geophysical exploration;

(3) name and address of the company insuring the geophysical firm;

(4) the number of the bond required in 82-1-104;

(5) a description of the surface areas where the planned geophysical activity will take place;

(6) anticipated need, if any, to obtain water from the surface user during planned geophysical activity.

History: En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977; R.C.M. 1947, 69-3305.1(4).

82-1-108. Filing record of work performed. (1) Within 3 months from the day any firing of shotpoints in geophysical exploration is done by any person, firm, or corporation within this state, such person, firm, or corporation shall file with the county clerk and recorder of the county in which the work was done a record showing each township and range within the county in which the work was performed and the approximate date on which the work was performed.

(2) Such person, firm, or corporation shall file with the county clerk and recorder a record showing the location of each shotpoint and date fired within a maximum area of any square, 4-section area of land, upon written request of the county clerk and recorder. The request must be based upon the complaint of a property owner that physical damage to his property has resulted from the use of the seismograph and explosives in geophysical operations at some location within the maximum 4-square mile area, and the

request shall designate the name and address of the complaining person and the approximate date and nature of the alleged damages. The required record of operations in response to the request of the county clerk and recorder shall be supplied within 10 days from the date on which the request is received.

History: En. Sec. 6, Ch. 235, L. 1955; R.C.M. 1947, 69-3306; amd. Sec. 1, Ch. 201, L. 1979.

82-1-109. Enforcement by county attorneys. It shall be the duty of the several county attorneys to see that the provisions herein contained are complied with and that this law is enforced.

History: En. Sec. 7, Ch. 235, L. 1955; R.C.M. 1947, 69-3307.

82-1-110. Penalty. A failure to comply with the terms of this part shall be deemed a misdemeanor and shall be punishable as is elsewhere provided in this code, either by fine or imprisonment, or both. The geophysical permit of any person, firm, or corporation convicted of a violation of the plugging requirements of this part shall be revoked and may not be renewed for a period of 2 years after conviction.

History: En. Sec. 8, Ch. 235, L. 1955; amd. Sec. 3, Ch. 272, L. 1977; R.C.M. 1947, 69-3308.

Part 2

Cancellation and Forfeiture of Oil, Gas, or Mineral Leases

82-1-201. Release of record upon forfeiture of lease. When any oil, gas, or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be the duty of the lessee, his successor, or assigns, within 60 days from the date of the forfeiture of any and all leases, to have such lease or abstract of such lease released from record in the county where the leased land is situated without cost to the owner thereof.

History: En. Sec. 1, Ch. 22, L. 1917; re-en. Sec. 6902, R.C.M. 1921; re-en. Sec. 6902, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1971; R.C.M. 1947, 73-114.

82-1-202. Action to compel release — procedure without court action. (1) If the lessee or assignee thereof neglects or refuses to execute a release as provided by this part, the owner of the leased premises may sue in any court of competent jurisdiction to obtain the release, and in such action he also may recover from the lessee, his successor, or assigns the sum of \$100 as damages, all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and any additional damages that the evidence in the case warrants. Writs of attachment may issue as in other cases. If in the action the plaintiff fails to establish the forfeiture of the lease, an attorney's fee must be allowed to the lessee or assignee of the lease. Issues in regard to attorney's fees shall be determined in the same manner as other issues in such actions.

(2) When, by its terms, an oil or gas lease has expired and is subject to forfeiture for nonperformance and more than 3 years have elapsed since the expiration, the owner of the leased premises, in addition to all other remedies, may serve a written notice on the lessee or on the assignee thereof, which notice shall state:

(a) the names of the lessor, lessee, and assignee thereof if assigned;

(b) the date of the lease and the date of the expiration thereof;

(c) the description of the lands leased;

(d) the place, book, and page where the lease is recorded; and

(e) that if the lessee or assignee fails to execute a release of record of the lease or abstract of the lease, the lease shall be terminated and of no effect and shall cease to be a lien upon the lands described therein, unless the lessee or the assignee thereof, within 60 days from the date of service of the notice, files, in the county clerk's office in the county where the lease or abstract of such lease is recorded, an affidavit stating that the lease is in effect and delivers a copy thereof to the owner of the leased lands.

(3) If the lessee or the assignee thereof resides in the county where the lease or abstract of the lease is recorded, the notice shall be personally served on that person. If the lessee or the assignee thereof does not reside in that county but his address appears on the records in that county clerk's office or is otherwise known, the notice shall be mailed by certified mail to that person at that address, and in addition thereto the notice shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the lands are situated. If the address of the lessee or assignee is unknown, the notice shall be published in the manner provided above. The date of service of the notice, if served personally, the date of mailing, if served by mail, and the first date of publication of the notice, if published, must be at least 60 days before the date of termination referred to in the notice.

(4) Upon the expiration of the time mentioned in the notice, if the affidavit of the lessee or assignee has not been filed as herein provided, the owner of the leased lands shall file an affidavit of service of the notice in the county clerk's office of the county in which the lands are located, and the affidavit shall be kept as a permanent file in his office, and this proof of notice when so filed is prima facie evidence of the sufficiency of the notice, and from the filing thereof the lease is terminated and the lands released from the lien thereof.

History: En. Sec. 2, Ch. 22, L. 1917; re-en. Sec. 6903, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1929; re-en. Sec. 6903, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1947; amd. Sec. 6, Ch. 218, L. 1971; amd. Sec. 36, Ch. 39, L. 1977; R.C.M. 1947, 73-115.

82-1-203. Demand for release prior to action. At least 20 days before bringing the action provided for in this part, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease, if such demand by ordinary diligence can be made in this state, that said lease or abstract of such lease be released of record. Such demand must be written. When written, a letterpress or carbon or written copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

History: En. Sec. 3, Ch. 22, L. 1917; re-en. Sec. 6904, R.C.M. 1921; re-en. Sec. 6904, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1971; R.C.M. 1947, 73-116.

82-1-204. Joinder of plaintiffs in actions concerning oil and gas leases. (1) In an action for the cancellation of an oil and/or gas lease or leases or quieting title against the claims thereunder, two or more plaintiffs may join in a single action against a common lessee and any one claiming by,

through, or under such lessee as an assignee or otherwise. In the complaint in such action the cause or causes of action of each plaintiff shall be set forth separately and there shall be designated the lease or leases or claims or interests sought to be canceled or quieted. It shall be no defense to such an action that the lands of the plaintiffs are noncontiguous or that there is a lack of mutuality of interest between the plaintiffs in the subject of the action or in the relief sought, and the decree in such action shall specify the lease, leases, claims, or interests canceled or quieted.

(2) This procedure shall be in addition to and not in substitution of any existing remedies now allowed by law.

History: En. Secs. 1, 2, Ch. 135, L. 1939; R.C.M. 1947, 93-2813, 93-2814.

Part 3

Trusts for Unlocatable Mineral Owners

82-1-301. Definition. The word "person", as used in this part, shall mean any individual, corporation, partnership, joint venture, trust or other entity capable of owning real property in Montana.

History: En. Sec. 6, Ch. 513, L. 1979.

82-1-302. Creation of trust for unlocatable mineral, leasehold, or royalty interest owners. (1) Any person who owns an interest in minerals underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of a person or persons also owning or claiming an interest in the minerals underlying the tract if their place of residence and present whereabouts is unknown and cannot reasonably be ascertained.

(2) In requesting the appointment of a trustee, the petitioner must show that:

(a) a diligent but unsuccessful effort to locate the absent owner or claimant has been made; and

(b) appointment of a trustee will be in the best interest of all owners of interest in the minerals.

(3) After determining that the conditions of subsection (2) have been met, the court shall appoint the clerk of court as a trustee and shall authorize him to execute and deliver an oil, gas, or other mineral lease, a ratification, division order, or other related document or instrument on such terms and conditions as the court may approve.

History: En. Sec. 1, Ch. 513, L. 1979.

82-1-303. No further liability for petitioner. If a trust in favor of unlocatable owners or claimants of an interest in minerals has been created and all bonuses, rental payments, royalties, and other income due to the absent owners are being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by unlocatable owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust.

History: En. Sec. 2, Ch. 513, L. 1979.

82-1-304. Administration of the trust. (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as defined in 72-21-104. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9.

History: En. Sec. 3, Ch. 513, L. 1979.

82-1-305. Existing trust for unlocatable mineral, leasehold, and royalty interest owners — transfer of trustees — penalty. (1) Any bonuses, rental payments, royalties, and other income now held by any person or association for unlocatable owners or claimants of an interest in minerals underlying a tract of land must be deposited with the clerk of the district court in which the tract is located within 6 months after July 1, 1979. An accounting for the funds, any related documents, and any instrument creating a trust must be filed with the funds.

(2) No person may personally hold for longer than 6 months any bonuses, rental payments, royalties, and other income for unlocatable owners or claimants of an interest in minerals, but in such case must petition the district court for creation of a trust as provided in 82-1-302.

(3) If any person fails to comply with subsections (1) or (2), he is liable for all attorney fees and court costs and interest on such funds at twice the current average passbook account rate paid by financial institutions in that district.

History: En. Sec. 4, Ch. 513, L. 1979.

82-1-306. Filing of addresses. Upon the payment of a \$5 fee, any person claiming an interest in minerals underlying a tract of land which is the subject of a trust proceeding under 82-1-302 may file with the clerk and recorder of each county wherein the mineral interests lie a notice of his address and the legal description of his interest and thereby establish a rebuttable presumption that such person owns the interest claimed.

History: En. Sec. 5, Ch. 513, L. 1979.

CHAPTER 2

MINING GENERALLY

Part 1 — Location and Record of Claims

Section

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Part 1

Location and Record of Claims

82-2-101. Manner of locating claim. Any person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits or a placer deposit of gold or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge, or deposit in the following manner:

(1) He shall post conspicuously at the point of discovery a written or printed notice of location containing the name of the claim, the name of the locator or locators, if there be more than one, the date of the location, which shall be the date of posting such notice, and the approximate dimensions of area of the claim intended to be appropriated.

(2) Within 30 days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds:

(a) a tree at least 8 inches in diameter and blazed on four sides;

(b) a post at least 4 inches square by 4 feet 6 inches in length, set 1 foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock and surrounded in all cases by a mound of earth or stone at least 4 feet in diameter by 2 feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound.

(c) a stone at least 6 inches square by 18 inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least 4 feet in diameter by 2 feet in height; or

(d) a boulder at least 3 feet above the natural surface of the ground on the upper side. Where other monuments or monuments of lesser dimensions than those above described are used, it shall be a question for the jury or for the court where the action is tried without a jury as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

(3) Within 60 days after posting such notice, the locator shall comply with the United States mining laws.

History: En. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R.C.M. 1921; Cal. Civ. C. Sec. 1426; re-en. Sec. 7365, R.C.M. 1935; amd. Sec. 1, Ch. 4, Ex. L. 1971; R.C.M. 1947, 50-701.

82-2-102. Record of certificate of location. (1) Within 60 days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which the mining claim is situated, and within 20 days thereafter, the county clerk shall provide a copy thereof to the department of state lands, Helena, Montana. The record shall consist of a certificate of location for each claim containing:

(a) the name of the lode or claim and whether located as a lode or placer claim;

(b) the name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators;

(c) the date of location and the description of the claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated by projected survey lines, if located in unsurveyed country;

(d) the directions and distances from the discovery point which describe the claim.

(2) The certificate of location must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified or a certified copy thereof is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of location as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the 60-day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in 82-2-112 affects the prima facie presumption created by this section.

History: En. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R.C.M. 1921; re-en. Sec. 7366, R.C.M. 1935; amd. Sec. 2, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 428, L. 1973; R.C.M. 1947, 50-702.

82-2-103. Affidavit of performance of annual work. (1) The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within 90 days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own or an affidavit of the person who performed such work or made the improvements, showing:

(a) the name of the mining claim or claims;

(b) the location of the claim or claims by section, township, and range, by projected survey lines if located in unsurveyed country;

(c) the book and page numbers wherein the original or latest amended relocation for each claim is recorded;

(d) the number of days' work done and the character and value of the improvements placed thereon or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

(e) the dates between which such work or improvements were effected;

(f) at whose instance the work was done or the improvements made;

(g) the actual amount paid for work and improvements and by whom paid when the same was not done by the owner.

(2) Annual assessment work may be performed or caused to be performed at one or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. Said point or points of work may be performed upon a

patented claim. If annual assessment work is performed or caused to be performed at one or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

(3) If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.

(4) An affidavit of performance of annual assessment work must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavit or a certified copy thereof is prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been performed and that the owner of the claim or claims has abandoned and surrendered same.

History: En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R.C.M. 1921; Cal. Civ. C. Sec. 1426m; re-en. Sec. 7368, R.C.M. 1935; amd. Sec. 3, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 312, L. 1973; amd. Sec. 1, Ch. 112, L. 1974; R.C.M. 1947, 50-704.

82-2-104. Millsites. Millsite claims may be located and recorded in the same manner as other claims, except that no discovery or discovery work is required. Where a millsite claim is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe, by appropriate reference, the mining claim to which it is appurtenant.

History: En. Sec. 3, Ch. 16, L. 1907; Sec. 2285, Rev. C. 1907; re-en. Sec. 7369, R.C.M. 1921; re-en. Sec. 7369, R.C.M. 1935; R.C.M. 1947, 50-705.

82-2-105. Relocation of abandoned claim. The relocater of an abandoned or forfeited mining claim may adopt as his discovery any shaft or other working existing upon such claim at the date of the relocation in which the vein, lode, or deposit is disclosed, but in such shaft or other working, he shall perform the same discovery work as is required in the case of an original location.

History: En. Sec. 4, Ch. 16, L. 1907; Sec. 2286, Rev. C. 1907; re-en. Sec. 7370, R.C.M. 1921; re-en. Sec. 7370, R.C.M. 1935; R.C.M. 1947, 50-706.

82-2-106. Rights of relocater. The rights of a relocater of any abandoned or forfeited mining claim hereafter relocated shall date from the posting of his notice of location thereon, and while he is duly performing the acts required by law to perfect his location, his rights shall not be affected by any reentry or resumption of work by the former locator or claimant.

History: En. Sec. 5, Ch. 16, L. 1907; Sec. 2287, Rev. C. 1907; re-en. Sec. 7371, R.C.M. 1921; re-en. Sec. 7371, R.C.M. 1935; R.C.M. 1947, 50-707.

82-2-107. Amended location. A locator or claimant may at any time amend his location and make any change in the boundaries which does not

involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate.

History: En. Sec. 6, Ch. 16, L. 1907; Sec. 2288, Rev. C. 1907; re-en. Sec. 7372, R.C.M. 1921; re-en. Sec. 7372, R.C.M. 1935; R.C.M. 1947, 50-708.

82-2-108. Relocation by owner. A locator or claimant may at any time relocate his own claim for any purpose, except to avoid the performance of annual labor thereon, and, by such relocation, may change the boundaries of his claim or the point of discovery, or both, but such relocation must comply in all respects with the requirements of this law as to an original location.

History: En. Sec. 7, Ch. 16, L. 1907; Sec. 2289, Rev. C. 1907; re-en. Sec. 7373, R.C.M. 1921; re-en. Sec. 7373, R.C.M. 1935; R.C.M. 1947, 50-709.

82-2-109. Amendment or relocation not a waiver of acquired rights. Where a locator or claimant amends or relocates his own claim, such amendment or relocation shall not be construed as a waiver of any right or title acquired by him by virtue of the previous location or record thereof, except as to such portions of the previous location as may be omitted from the boundaries of the claim as amended or relocated. As to the portion of ground included both in the original location and the location as amended or relocated, he may rely either upon the original location or the location as amended or relocated or upon both; provided that nothing herein contained shall be construed as permitting the locator or claimant to hold a tract which does not include a valid discovery.

History: En. Sec. 8, Ch. 16, L. 1907; Sec. 2290, Rev. C. 1907; re-en. Sec. 7374, R.C.M. 1921; re-en. Sec. 7374, R.C.M. 1935; R.C.M. 1947, 50-710.

82-2-110. Rights of third persons not affected. No amendment or relocation of a mining claim by the locator or claimant thereof shall interfere with any third person's right existing at the time of such amendment or relocation.

History: En. Sec. 9, Ch. 16, L. 1907; Sec. 2291, Rev. C. 1907; re-en. Sec. 7375, R.C.M. 1921; re-en. Sec. 7375, R.C.M. 1935; R.C.M. 1947, 50-711.

82-2-111. Validating locations already made. All mining locations made and recorded under the laws of this state heretofore in force that in any respect have failed to conform to the requirements of such laws shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this part, be valid if the making and recording of such locations conform to the requirements of this part.

History: En. Sec. 10, Ch. 16, L. 1907; Sec. 2292, Rev. C. 1907; re-en. Sec. 7376, R.C.M. 1921; re-en. Sec. 7376, R.C.M. 1935; R.C.M. 1947, 50-712.

82-2-112. Defective locations good against persons with notice. The period of time prescribed by this law for the performance of any act shall not be deemed mandatory where the act is performed before the rights of third persons have intervened, and no defect in the posted notice or recorded certificate shall be deemed material, except as against one who has located the same ground or some portion thereof in good faith and without

notice. Notice to an agent who makes a location in behalf of another shall be deemed notice to his principal, and notice to one of several coclaimants shall be deemed notice to all.

History: En. Sec. 11, Ch. 16, L. 1907; Sec. 2293, Rev. C. 1907; re-en. Sec. 7377, R.C.M. 1921; re-en. Sec. 7377, R.C.M. 1935; R.C.M. 1947, 50-713. 6

82-2-113. Effect of patent. The issuance of a United States patent for a mining claim is considered conclusive evidence that the requirements of the laws of this state relative to the location and record of such mining claim have been duly complied with. However, if questions of priority are involved, the date of the location shall be an issuable fact when it is claimed to have been prior to the date of the record of the location.

History: En. Sec. 12, Ch. 16, L. 1907; Sec. 2294, Rev. C. 1907; re-en. Sec. 7378, R.C.M. 1921; re-en. Sec. 7378, R.C.M. 1935; amd. Sec. 10, Ch. 39, L. 1977; R.C.M. 1947, 50-714.

82-2-114. Amended locations. If, at any time, the locator of any mining claim heretofore or hereafter located or his successors or assigns shall apprehend that his original declaratory statement was defective or erroneous or that the requirements of law had not been complied with or shall be desirous of changing his boundaries or taking in any part of an overlapping claim which has been abandoned or in case his original declaratory statement was filed prior to the passage of this law and he shall be desirous of securing the benefit of this part, such locator or his successors or assigns may file an additional or amended declaratory statement subject to the provisions of this part; provided that such relocation or filing of the amended or additional declaratory statement shall not interfere with the existing rights of others at the time of such relocation or filing of the amended or additional declaratory statement, and no such relocation or amended or additional declaratory statement or other record thereof shall preclude the claimant or claimants from proving any such title as he or they may have held under the previous location and notice thereof.

History: En. Sec. 1, p. 56, L. 1901; re-en. Sec. 2295, Rev. C. 1907; re-en. Sec. 7379, R.C.M. 1921; Cal. Civ. C. Sec. 1426h; re-en. Sec. 7379, R.C.M. 1935; R.C.M. 1947, 50-715.

82-2-115. Filing of false mining claims. Every person who shall offer any location certificate for a placer mining claim or lode claim or affidavit of assessment work to be filed in an office of a county clerk of this state on behalf of himself or for any other person or any person who shall procure others to do so, knowing that such claim or certificate or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state, shall be punished by imprisonment in the state penitentiary for not more than 5 years or by a fine of not more than \$5,000 or by both.

History: En. Sec. 1, Ch. 135, L. 1973; R.C.M. 1947, 50-702.1.

Part 2

Rights-of-Way and Eminent Domain

82-2-201. Right-of-way of owners of mines. The owner of a mining claim held under the laws of the United States by patent or otherwise

or under the local laws and customs of the state has a right-of-way over and across the land or mining claim of another, patented or otherwise, as prescribed in this part.

History: En. Sec. 1, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 886, 5th Div. Rev. Stat. 1879; re-en. Sec. 1495, Comp. Stat. 1887; amd. and re-en. Sec. 3630, Pol. C. 1895; re-en. Sec. 2297, Rev. C. 1907; re-en. Sec. 7382, R.C.M. 1921; re-en. Sec. 7382, R.C.M. 1935; R.C.M. 1947, 50-801.

82-2-202. Road or ditch right-of-way. Whenever a mine or mining claim is so situated that it cannot be conveniently worked without a road thereto or a ditch to convey water thereto or a ditch or a cut to convey the water therefrom or without a flume to carry water and tailings therefrom or without a shaft or tunnel thereto, which road, ditch, cut, flume, or tunnel must necessarily pass over, under, through, or across any lands or mining claims owned or occupied by another, such owner is entitled to a right-of-way for said road, ditch, cut, flume, shaft, or tunnel over, under, through, and across the lands or mining claims belonging to another, upon compliance with the provisions of this part.

History: En. Sec. 2, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 887, 5th Div. Rev. Stat. 1879; re-en. Sec. 1496, Comp. Stat. 1887; amd. and re-en. Sec. 3631, Pol. C. 1895; re-en. Sec. 2298, Rev. C. 1907; re-en. Sec. 7383, R.C.M. 1921; re-en. Sec. 7383, R.C.M. 1935; R.C.M. 1947, 50-802.

82-2-203. Proceedings to obtain right-of-way. Whenever such owner desires to work a mine or mining claim and it is necessary to enable him to do so successfully and conveniently that he should have a right-of-way for any of the purposes mentioned in the foregoing sections and if such right-of-way has not been acquired by agreement between him and the owner of the land or claims over, under, across, and upon which he seeks to establish such right-of-way, it is lawful for him to present to the judge of the district court a complaint asking that such right-of-way be awarded to him. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the lands to be affected by such right-of-way, with the names of the occupants or owners thereof, and may also set forth any tender or offer hereinafter mentioned.

History: En. Sec. 3, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 888, 5th Div. Rev. Stat. 1879; re-en. Sec. 1497, Comp. Stat. 1887; amd. and re-en. Sec. 3632, Pol. C. 1895; re-en. Sec. 2299, Rev. C. 1907; re-en. Sec. 7384, R.C.M. 1921; re-en. Sec. 7384, R.C.M. 1935; R.C.M. 1947, 50-803.

82-2-204. Proceedings before the court. Upon the receipt of the complaint and filing thereof with the clerk of the court, the judge must direct a summons to issue to the defendants named in the complaint requiring them to appear before the judge on a day therein named, which must be not less than 10 days from the service thereof, and show cause why such right-of-way should not be allowed. The summons may be served on each of the parties in the manner prescribed by law for serving summons in other actions.

History: En. Sec. 4, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 889, 5th Div. Rev. Stat. 1879; re-en. Sec. 1498, Comp. Stat. 1887; amd. and re-en. Sec. 3633, Pol. C. 1895; re-en. Sec. 2300, Rev. C. 1907; re-en. Sec. 7385, R.C.M. 1921; re-en. Sec. 7385, R.C.M. 1935; R.C.M. 1947, 50-804.

82-2-205. Court order and appointment of commissioners. Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, and issue must be joined, and the

judge must hear the allegations and proofs of the respective parties. If, upon such hearing, the judge is satisfied that the claims of the plaintiff can be worked conveniently only by means of the privilege asked for, he must make an order adjudging and awarding to the plaintiff such right-of-way and must appoint three commissioners who are disinterested persons and residents of the county to assess the damages to the lands or claims affected by such order.

History: En. Sec. 5, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 890, 5th Div. Rev. Stat. 1879; re-en. Sec. 1499, Comp. Stat. 1887; amd. and re-en. Sec. 3634, Pol. C. 1895; re-en. Sec. 2301, Rev. C. 1907; re-en. Sec. 7386, R.C.M. 1921; re-en. Sec. 7386, R.C.M. 1935; amd. Sec. 11, Ch. 39, L. 1977; R.C.M. 1947, 50-805.

82-2-206. Commissioners to assess damages. The commissioners must be sworn to faithfully and impartially discharge their duties and must without delay examine the property, lands, and claims and assess the damages resulting from such right-of-way and report the amount to the judge, and if such right-of-way affects the property of more than one person, such report must contain an assessment of damages to each person.

History: En. Sec. 6, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 891, 5th Div. Rev. Stat. 1879; re-en. Sec. 1500, Comp. Stat. 1887; amd. and re-en. Sec. 3635, Pol. C. 1895; re-en. Sec. 2302, Rev. C. 1907; re-en. Sec. 7387, R.C.M. 1921; re-en. Sec. 7387, R.C.M. 1935; R.C.M. 1947, 50-806.

82-2-207. Power to set aside commissioners' report. For good cause shown, the judge may set aside the report of the commissioners and appoint three other commissioners.

History: En. Sec. 7, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 892, 5th Div. Rev. Stat. 1879; re-en. Sec. 1501, Comp. Stat. 1887; amd. and re-en. Sec. 3636, Pol. C. 1895; re-en. Sec. 2303, Rev. C. 1907; re-en. Sec. 7388, R.C.M. 1921; re-en. Sec. 7388, R.C.M. 1935; R.C.M. 1947, 50-807.

82-2-208. Right-of-way to commence upon payment of assessed damages. Upon the payment of the sum assessed as damages and all costs to the persons to whom it is awarded or the payment of the same to the clerk for the use of such person, plaintiff is entitled to the right-of-way and may immediately proceed to occupy the same and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right-of-way so awarded.

History: En. Sec. 8, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 893, 5th Div. Rev. Stat. 1879; re-en. Sec. 1502, Comp. Stat. 1887; amd. and re-en. Sec. 3637, Pol. C. 1895; re-en. Sec. 2304, Rev. C. 1907; re-en. Sec. 7389, R.C.M. 1921; re-en. Sec. 7389, R.C.M. 1935; R.C.M. 1947, 50-808.

82-2-209. Appeal from assessment of damages. An appeal from the assessment of damages made by the commissioners may be taken to the district court by any party interested at any time within 10 days after the filing of the report of the commissioners. A written notice of appeal must be filed with the clerk and served upon the opposite party.

History: En. Sec. 9, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 894, 5th Div. Rev. Stat. 1879; re-en. Sec. 1503, Comp. Stat. 1887; amd. and re-en. Sec. 3638, Pol. C. 1895; re-en. Sec. 2305, Rev. C. 1907; re-en. Sec. 7390, R.C.M. 1921; re-en. Sec. 7390, R.C.M. 1935; R.C.M. 1947, 50-809.

82-2-210. Trial on appeal and costs. On appeal, the question of the amount of damages may be tried by the court or jury as in other cases. If

the appellant recovers damages exceeding the amount awarded by the commissioners, the opposite party must pay the costs of appeal, otherwise the appellant.

History: En. Sec. 10, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 895, 5th Div. Rev. Stat. 1879; re-en. Sec. 1504, Comp. Stat. 1887; amd. and re-en. Sec. 3639, Pol. C. 1895; re-en. Sec. 2306, Rev. C. 1907; re-en. Sec. 7391, R.C.M. 1921; re-en. Sec. 7391, R.C.M. 1935; R.C.M. 1947, 50-810.

82-2-211. Payment of costs. All costs and expenses of the proceedings under the provisions of this part, except as provided in 82-2-210, must be paid by the plaintiff or party making the application. The judge may, if the right-of-way asked for is denied, allow the opposite party a reasonable counsel fee.

History: En. Sec. 3640, Pol. C. 1895; re-en. Sec. 2307, Rev. C. 1907; re-en. Sec. 7392, R.C.M. 1921; re-en. Sec. 7392, R.C.M. 1935; R.C.M. 1947, 50-811.

82-2-212. Appeal to supreme court. An appeal to the supreme court may be taken by either party as in other cases.

History: En. Sec. 3641, Pol. C. 1895; re-en. Sec. 2308, Rev. C. 1907; re-en. Sec. 7393, R.C.M. 1921; re-en. Sec. 7393, R.C.M. 1935; R.C.M. 1947, 50-812.

82-2-213 through 82-2-220 reserved.

82-2-221. Eminent domain for open-pit mining — purchase of property required. Whenever the right of eminent domain is exercised to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount asked for such property within 30 days from the entry of the court order appointing commissioners in said eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid for such property in the manner prescribed in Title 70, chapters 30 and 31, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain.

History: En. Sec. 1, Ch. 240, L. 1961; amd. Sec. 1, Ch. 304, L. 1973; R.C.M. 1947, 50-813.

82-2-222. Construction of alternate facilities. Whenever it is sought to condemn streets, roads, alleys, or highways for the purposes stated in 82-2-221 hereof, there shall also be attached to the complaint for condemnation a plat or plats showing the alternate facilities to be proposed and paid for by the plaintiff, and the court, in its final order of condemnation, may order the plaintiff to construct such reasonable and adequate alternate facilities as it deems appropriate under the circumstances.

History: En. Sec. 2, Ch. 240, L. 1961; R.C.M. 1947, 50-814.

82-2-223. Compensation for property. (1) The measure of compensation for the property located within 300 yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a

similar area not affected by open-pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open-pit mining operations.

History: En. Sec. 3, Ch. 240, L. 1961; amd. Sec. 2, Ch. 304, L. 1973; R.C.M. 1947, 50-815.

82-2-224. Notice of condemnation — filing of plat. Any party seeking to condemn property for open-pit mining purposes shall serve notice in writing on all owners of property within 300 yards of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided.

History: En. Sec. 4, Ch. 240, L. 1961; amd. Sec. 3, Ch. 304, L. 1973; R.C.M. 1947, 50-816.

Part 3

Landowner Notification of Surface Operations

82-2-301. Short title. This part may be referred to as “The Landowner Notification Act”.

History: En. Sec. 1, Ch. 335, L. 1971; R.C.M. 1947, 50-1301.

82-2-302. Ascertaining ownership of land. All prospectors for minerals, miners, or other persons contemplating surface disturbance by mechanical equipment other than hand tools on lands within the state of Montana are required to ascertain the ownership and possessory right of any land before performing any such operations causing surface disturbance such as road or trail building or any other work disturbing the surface on such land.

History: En. Sec. 2, Ch. 335, L. 1971; R.C.M. 1947, 50-1302.

82-2-303. Written notice and approval required before commencement of operations. (1) The land or surface of land not owned in fee by such person may not be disturbed in any manner until the owner or manager of the surface of said land and the owner of a possessory right to said land are given notice in writing, accompanied by a map showing the specific locations involved, of such person’s intent or desire to enter upon such land, which will sufficiently disclose the plan of work and operations, including contemplated measures for the protection and restoration of the land and waters, to enable the owner or manager of the land and any person holding a possessory right to such land to evaluate the extent of disturbance contemplated and the effectiveness and sufficiency of the protection and restoration measures planned.

(2) Before commencement of any work or operations on any such lands, such person must first obtain from the surface owner of private land specific written approval of the proposed work or operations.

(3) In the case of city, county, state, or federally-owned lands, such person must first obtain the authorization or permit, if any, required by the

applicable law and the regulations of the governmental agency or board charged by law with the administration or management of the surface of such land.

History: En. Sec. 3, Ch. 335, L. 1971; R.C.M. 1947, 50-1303.

82-2-304. Exemption — discovery pits on federal lands. Discovery pits which may be required to locate a mining claim on federal lands open to mineral entry, when excavated entirely by hand methods with hand tools, are exempt from the operation of this part.

History: En. Sec. 4, Ch. 335, L. 1971; R.C.M. 1947, 50-1304.

82-2-305. Exemption — operations pursuant to prospecting permits or other agreements. The provisions of this part shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect.

History: En. Sec. 5, Ch. 335, L. 1971; amd. Sec. 1, Ch. 194, L. 1973; R.C.M. 1947, 50-1305.

82-2-306. Violation — immunity of landowner. Any work done in violation of this part is punishable as a misdemeanor, and each day of violation shall constitute a separate offense. The owner or lessor shall not be liable for injury to any person on either owned or leased land.

History: En. Sec. 6, Ch. 335, L. 1971; R.C.M. 1947, 50-1306.

Part 4

Assaying of Ore and Payment for Consignments

82-2-401. Samplerooms required. Any person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal shall maintain a sampling-room or house to which the ore shippers, their agents, or representatives shall have access at all times during the sampling of ores or while the same is being carried on and in which shall be samples of all ores he or they may buy or smelt.

History: En. Sec. 1, Ch. 54, L. 1909; re-en. Sec. 3436, R.C.M. 1921; re-en. Sec. 3436, R.C.M. 1935; R.C.M. 1947, 50-201.

82-2-402. Samples of fifty pounds per ton to be retained until settlement. A person, association, or corporation which buys any ores upon an agreement to pay for them in amount dependent upon their metallic contents or smelts any ore shall retain from the pulp or crushed ore, as the same is sampled, a quantity of not less than 50 pounds out of each ton of ore, which quantity shall be selected regularly and at equal intervals from any lot of ore so bought or to be smelted, and shall keep this quantity separate from any other ores or pulp for a period of 30 days or until full settlement is made and accepted by the shipper. Until full settlement is made and accepted, the ore shipper, his agents, or representatives may take from the quantity so retained any part thereof for the purpose of sampling or assaying that part;

however, the value of any part so taken by the owner or shipper may be deducted from the total value of the ore delivered by him.

History: En. Sec. 2, Ch. 54, L. 1909; re-en. Sec. 3437, R.C.M. 1921; re-en. Sec. 3437, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1977; R.C.M. 1947, 50-202.

82-2-403. Penalty for commingling foreign substances with ore. Any person or persons, corporation, association, or partnership which shall, with intent to defraud, in any manner whatever, introduce any foreign substance into any ore or commingle any foreign substance with any ore intended for sale in any smelter or which any person, association, or corporation shall have undertaken for hire to smelt or into any sample retained for tests or assays, as provided in 82-2-402, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 or more than \$1,000 or by imprisonment in the county jail for a period of not less than 60 days or more than 12 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 54, L. 1909; amd. Sec. 1, Ch. 44, L. 1921; re-en. Sec. 3438, R.C.M. 1921; re-en. Sec. 3438, R.C.M. 1935; R.C.M. 1947, 50-203.

82-2-404. Umpire assayers — appointment, qualifications, and duties. A person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt them, whether for themselves or as the agent or agents for other purchasers, shall choose an assayer who has operated an assay office or chemical laboratory for at least 1 year. The person, association, or corporation shall submit to the selected assayer all samples of ore over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of the ore. The chosen assayer shall be known as the umpire for the person, association, or corporation.

History: En. Sec. 1, Ch. 115, L. 1909; re-en. Sec. 3439, R.C.M. 1921; re-en. Sec. 3439, R.C.M. 1935; amd. Sec. 2, Ch. 39, L. 1977; R.C.M. 1947, 50-204; amd. Sec. 1, Ch. 27, L. 1979.

82-2-405. Notice of selection. Upon the selection of the umpire, who shall be actively engaged in the assaying business in this state, the person, association, or corporation selecting him shall, within 10 days after the selection is made, post a notice of the selection in a conspicuous place within and without the room or house where the sampling of ores is carried on by the person, association, or corporation.

History: En. Sec. 2, Ch. 115, L. 1909; re-en. Sec. 3440, R.C.M. 1921; re-en. Sec. 3440, R.C.M. 1935; amd. Sec. 3, Ch. 39, L. 1977; R.C.M. 1947, 50-205.

82-2-406. Violation — penalty. Every person, association, or corporation engaged in the sampling of ores belonging to others which fails to comply with the provisions of 82-2-404 or 82-2-405 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or less than \$500.

History: En. Sec. 3, Ch. 115, L. 1909; re-en. Sec. 3441, R.C.M. 1921; re-en. Sec. 3441, R.C.M. 1935; R.C.M. 1947, 50-206.

82-2-407 through 82-2-420 reserved.

82-2-421. Time for payment for ores. (1) Every person, association, company, or corporation engaged within this state in purchasing ores, minerals, or metals from or in smelting, milling, or otherwise reducing or preparing the same for market for any other person or persons, association,

company, or corporation shall, within 20 days after any such ores, minerals, or metals shall have arrived at his, their, or its smelter, mill, reduction works, yards, or other place for receiving such ores, minerals, or metals, make full settlement with and payment of the amount due to the consignor or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction.

(2) However, the provisions of this section shall not be applicable to any such ores, minerals, or metals received pursuant to an existing written contract at time of shipment between the consignor or consignors thereof and the person, association, company, or corporation receiving the same, where the time for settlement and payment is provided for in such contract.

History: En. Sec. 1, Ch. 37, L. 1911; re-en. Sec. 3442, R.C.M. 1921; re-en. Sec. 3442, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1953; R.C.M. 1947, 50-301(part).

82-2-422. Violation — penalty. Any person, association, company, or corporation violating any of the provisions of 82-2-421 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or less than \$500.

History: En. Sec. 2, Ch. 37, L. 1911; re-en. Sec. 3443, R.C.M. 1921; re-en. Sec. 3443, R.C.M. 1935; R.C.M. 1947, 50-302.

82-2-423. Statement by purchasers of ore from leased mines. A person or corporation buying or treating ores from leased mines or mining claims shall furnish the lessor and the lessee of the mines or mining claims a true and correct copy of the statement of returns of ores from the sale or shipment. The statement shall show both the gross and net proceeds derived from the sale or shipment of ores. Upon shipment of the ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating them the names and post-office addresses of the lessor and the lessee interested in that shipment of ores, and within 7 days after receipt of the statement from the sampling works or smelter, the shipper shall make settlement with the lessor and the lessee for the shipment or sale of ores, based upon the statement received by the parties from the sampling works or smelter.

History: En. Sec. 1, Ch. 79, L. 1921; re-en. Sec. 3444, R.C.M. 1921; re-en. Sec. 3444, R.C.M. 1935; amd. Sec. 4, Ch. 39, L. 1977; R.C.M. 1947, 50-303.

82-2-424. Copy of statement to lessee. Sampling works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought from or treated for lessors of mines to the lessee of the mine or mining claim from which the ores were extracted at the same time the statement is furnished to the lessor of the mine or mining claim or shipper of the ore.

History: En. 3444.1, R.C.M. 1935 by Sec. 1, Ch. 17, L. 1937; amd. Sec. 5, Ch. 39, L. 1977; R.C.M. 1947, 50-304.

82-2-425. Shipper — penalty for violation. A person or corporation who, as the shipper, violates 82-2-423, as amended, is liable to the lessor and the lessee for 10% of the net returns from the shipment or sale of ores referred to in that section, in addition to the value of the interest of the

lessor and the lessee in the shipment. This amount may be recovered in an action in any court of competent jurisdiction.

History: En. Sec. 2, Ch. 79, L. 1921; re-en. Sec. 3445, R.C.M. 1921; re-en. Sec. 3445, R.C.M. 1935; amd. Sec. 6, Ch. 39, L. 1977; R.C.M. 1947, 50-305.

82-2-426. Smelters — penalty for violation. Any person or corporation operating any sampling works or smelter within this state who shall violate any of the provisions of 82-2-423 and 82-2-424 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not less than \$50 or more than \$100.

History: En. Sec. 3, Ch. 79, L. 1921; re-en. Sec. 3446, R.C.M. 1921; re-en. Sec. 3446, R.C.M. 1935; amd. Sec. 2, Ch. 17, L. 1937; R.C.M. 1947, 50-306.

CHAPTER 3

COAL MINING

Part 1 — Coal Conservation

Section

- 82-3-101. Short title.
- 82-3-102. Policy and purpose.
- 82-3-103. Definitions.
- 82-3-104. Approved strip-mining plan required — effective period.
- 82-3-105. Review of strip-mining plan.
- 82-3-106. Appeal on disapproval of plan.
- 82-3-107. Rules.
- 82-3-108. Procedure for hearings and appeals.
- 82-3-109. Penalties.
- 82-3-110. Deposit of fines.

Part 2 — Coal Invoices

- 82-3-201. Regulations on bills and invoices.
- 82-3-202. Dealers' duties concerning bills and invoices.
- 82-3-203. Copies of bills and invoices to be kept for inspection.
- 82-3-204. Enforcement.
- 82-3-205. Penalty.

Part 1

Coal Conservation

82-3-101. (Temporary) Short title. This part shall be known and may be cited as “The Strip-Mined Coal Conservation Act”. **(Repealed with effective date as provided in Compiler’s Comment under 82-4-202.)**

History: En. Sec. 1, Ch. 220, L. 1973; R.C.M. 1947, 50-1401.

82-3-102. (Temporary) Policy and purpose. (1) Recognizing the importance of natural resources to the welfare of present and future generations of the people of Montana, it is declared to be the public policy in providing for the orderly development of coal resources through strip mining to assure the wise use and to prevent the waste of coal.

(2) It is the purpose of this part:

(a) to vest in the department the authority to review strip-mining plans and either approve or disapprove such plans for the purpose of preventing waste; and

(b) to vest in the board the authority to adopt rules to prohibit waste resulting from strip-mining operations. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 2, Ch. 220, L. 1973; R.C.M. 1947, 50-1402.

82-3-103. (Temporary) Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the state board of land commissioners.

(2) "Department" means the department of state lands.

(3) "Marketable coal" means strippable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(4) "Operation" means any person engaged in strip mining who removes more than 10,000 cubic yards of coal or overburden.

(5) "Operator" means a person that conducts an operation.

(6) "Overburden" means all of the earth and other materials which lie above a natural coal deposit and also means such earth and other material after removal from their natural state in the process of strip mining.

(7) "Person" means a person, partnership, corporation, association, or other legal entity.

(8) "Strip mining" means all or any part of the process followed in the production of coal by the opencut method including mining by the auger method or any similar method which penetrates a coal deposit and removes coal directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the coal.

(9) "Strip-mining plan" means the planned course of conduct of a strip-mining operation to include plans for the removal and utilization of strippable and marketable coal located within the area planned to be mined.

(10) "Strippable coal" means that coal which can be removed through strip-mining methods adaptable to the location that coal is being strip mined or is planned to be strip mined.

(11) "Waste" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of strippable and marketable coal in accordance with reclamation standards established by the department shall not be considered waste. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 3, Ch. 220, L. 1973; R.C.M. 1947, 50-1403.

82-3-104. (Temporary) Approved strip-mining plan required — effective period. (1) No operator may engage in strip mining without first obtaining approval of a strip-mining plan from the department as provided for in 82-3-105, as amended.

(2) Approved strip-mining plans shall be effective for 5 years from the date the plan is approved, with annual reports to the department, as prescribed in 82-4-237, in which the operator indicates whether any waste has

occurred in the past year or is expected to occur in the forthcoming year. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 4, Ch. 220, L. 1973; amd. Sec. 15, Ch. 39, L. 1977; amd. Sec. 4, Ch. 352, L. 1977; R.C.M. 1947, 50-1404.

82-3-105. (Temporary) Review of strip-mining plan. (1) Upon submission of a strip-mining plan to the department, the department shall review the plan for the purpose of determining whether waste will occur. The department may require an operator to submit any information it deems necessary for review of the strip-mining plan to determine whether waste will occur and may make inspections and investigations it deems necessary for the review. The department shall either approve or disapprove a strip-mining plan within 6 months of its receipt from the operator. In the event a strip-mining plan is disapproved, the department shall recommend the means to bring the plan into conformance with this part. Any strip-mining plan not approved or disapproved by the department within 6 months of its receipt will be deemed approved for the purposes of this part.

(2) The department shall adopt procedures for the submission of strip-mining plans and prescribe the format for the preparation of strip-mining plans.

(3) Upon request by the operator for good cause shown, the department may modify the terms and conditions of an approved strip-mining plan at any time during the course of an operation. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 5, Ch. 220, L. 1973; R.C.M. 1947, 50-1405.

82-3-106. (Temporary) Appeal on disapproval of plan. If a strip-mining plan is disapproved, the operator or his authorized representative may appeal to the board. Within 30 days of receiving a request for a hearing, the board must hold a hearing. For good cause shown, the hearing may be held not more than 60 days after receipt of the request by the board. The decision of the department with regard to the strip-mining plan shall remain in effect not more than 5 working days after the hearing unless the decision is sooner affirmed, modified, or revoked by the board. The board may require an operator to submit any information it deems necessary for the hearing and may make inspections and investigations it deems necessary for the hearing. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 6, Ch. 220, L. 1973; R.C.M. 1947, 50-1406(1).

82-3-107. (Temporary) Rules. The board may adopt rules to prevent the waste of coal resulting from strip-mining operations and to otherwise effectuate the purposes and intent of this part. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 6, Ch. 220, L. 1973; R.C.M. 1947, 50-1406(2).

82-3-108. (Temporary) Procedure for hearings and appeals. All hearings and appeal procedures shall be in accordance with parts 6 and 7 of chapter 4, Title 2. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 8, Ch. 220, L. 1973; R.C.M. 1947, 50-1408.

82-3-109. (Temporary) Penalties. (1) Any operator who engages in an operation without an approved strip-mining plan as provided for in this part shall be liable to a civil penalty of not less than \$100 or more than \$1,000 and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues. Such penalties shall be recoverable in an action brought in the name of the state by the attorney general in the first judicial district of the state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) Any operator that fails to comply with the terms of an approved strip-mining plan shall be liable to a civil penalty of not less than \$1,000 or more than \$10,000. Upon conviction the court may revoke the strip-mining plan. In the event of revocation of the strip-mining plan, the operator must proceed as provided for in 82-3-105. The penalties provided for in subsection (1) of this section shall apply to revoked strip-mining plans.

(3) Any person or operator who violates a rule adopted by the board pursuant to this part is guilty of a misdemeanor. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 7, Ch. 220, L. 1973; R.C.M. 1947, 50-1407.

82-3-110. (Temporary) Deposit of fines. All fines collected under the provisions of this part shall be deposited in the general fund. **(Repealed with effective date as provided in Compiler's Comment under 82-4-202.)**

History: En. Sec. 10, Ch. 220, L. 1973; R.C.M. 1947, 50-1409.

Part 2

Coal Invoices

82-3-201. Regulations on bills and invoices. Any person, firm, or corporation engaged in mining, producing, or shipping of coal within the state of Montana shall accurately bill and invoice the same, plainly indicating on all bills or invoices therefor the place where the same was mined, the person, firm, or corporation by whom the same was mined, and the trade name or mark, if any, thereof.

History: En. Sec. 1, Ch. 104, L. 1927; re-en. Sec. 3546.1, R.C.M. 1935; R.C.M. 1947, 50-601.

82-3-202. Dealers' duties concerning bills and invoices. Any person, firm, or corporation wholesaling, jobbing, exchanging, offering for sale, or selling at retail any coal within the state of Montana shall accurately bill and invoice the same to the person, firm, or corporation purchasing or receiving the same and shall plainly indicate on all statements, bills, or invoices therefor the name of the coal, the name of the person, firm, or corporation producing the same, the place where mined, and the trade name or trademark, if any, thereof.

History: En. Sec. 2, Ch. 104, L. 1927; re-en. Sec. 3546.2, R.C.M. 1935; R.C.M. 1947, 50-602.

82-3-203. Copies of bills and invoices to be kept for inspection. A person, firm, or corporation mining, shipping, or producing coal and all persons, firms, or corporations wholesaling, jobbing, exchanging, offering for

sale, or selling at retail any coal in this state shall keep a true, accurate, and complete copy of all the original statements, bills, and invoices of all coal produced, shipped, marketed, exchanged, or sold for at least 1 year. All papers, records, and files of any person, firm, or corporation transporting, producing, shipping, exchanging, or selling any coal in this state shall, at all times, be open to inspection by the attorney general, the county attorneys, and the department of business regulation for the purposes of enforcing this part.

History: En. Sec. 4, Ch. 104, L. 1927; re-en. Sec. 3546.4, R.C.M. 1935; amd. Sec. 117, Ch. 431, L. 1975; R.C.M. 1947, 50-604.

82-3-204. Enforcement. The department of business regulation shall enforce this part, and the attorney general and the county attorneys shall prosecute all cases arising under its provisions.

History: En. Sec. 6, Ch. 104, L. 1927; re-en. Sec. 3546.6, R.C.M. 1935; amd. Sec. 118, Ch. 431, L. 1975; R.C.M. 1947, 50-606.

82-3-205. Penalty. Every person, firm, or corporation violating any of the provisions of this part shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25 or more than \$500 or by imprisonment in the county jail for not more than 90 days or by both such fine and imprisonment. Any person, firm, or corporation convicted of a second violation of any of the provisions of this part shall be punished as above provided, and the license of any retail coal dealer shall, thereby, be automatically revoked, and it shall be unlawful for any person, firm, or corporation so convicted to engage thereafter in said retail business, either directly or indirectly, for a period of 6 months next after such second conviction.

History: En. Sec. 5, Ch. 104, L. 1927; re-en. Sec. 3546.5, R.C.M. 1935; R.C.M. 1947, 50-605.

CHAPTER 4

RECLAMATION

Part 1 — Strip and Underground Mine Siting

Section

- 82-4-101. Short title.
- 82-4-102. Policy and purpose.
- 82-4-103. Definitions.
- 82-4-104. Application.
Sections 82-4-105 through 82-4-110 reserved.
- 82-4-111. Orders and rules of board — hearings.
- 82-4-112. Administration.
- 82-4-113. Receipts paid into special fund — use of fund.
Sections 82-4-114 through 82-4-120 reserved.
- 82-4-121. Permit required.
- 82-4-122. Application and approval of permit.
- 82-4-123. Permit fee and surety bond.
- 82-4-124. Permit — authority under and renewal.
- 82-4-125. Refusal of permit.
- 82-4-126. When information may be used to meet strip-mining or underground-mining permit requirements.
- 82-4-127. Effect of siting permit on subsequent mining permits.
- 82-4-128. Termination of permit.

- 82-4-129. Noncompliance — suspension of permits.
- 82-4-130. Procedure for hearings and appeals.
Sections 82-4-131 through 82-4-140 reserved.
- 82-4-141. Violation — penalty.
- 82-4-142. Mandamus to compel enforcement.

Part 2 — Coal and Uranium Mine Reclamation

- 82-4-201. Short title.
- 82-4-202. Policy — findings.
- 82-4-203. Definitions.
- 82-4-204. Board orders, rules, and hearings.
- 82-4-205. Administration by department of state lands.
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Part 1

Strip and Underground Mine Siting

82-4-101. Short title. This part shall be known and may be cited as “The Strip and Underground Mine Siting Act”.

History: En. 50-1601 by Sec. 1, Ch. 280, L. 1974; amd. Sec. 1, Ch. 441, L. 1975; R.C.M. 1947, 50-1601.

82-4-102. Policy and purpose. (1) 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) 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 locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules, to suspend and revoke permits, and to conduct hearings;

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

History: En. 50-1602 by Sec. 2, Ch. 280, L. 1974; amd. Sec. 2, Ch. 441, L. 1975; R.C.M. 1947, 50-1602.

82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context the following definitions apply:

(1) "Board" means the board of land commissioners as provided for in Article X, section 4, of the constitution of this state.

(2) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(3) "Mineral" means mineral as defined in 82-4-203(12).

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land which the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all on-site disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts,

or incline planes connected with excavations penetrating the mineral stratum or strata are utilized.

History: En. 50-1603 by Sec. 3, Ch. 280, L. 1974; amd. Sec. 3, Ch. 441, L. 1975; R.C.M. 1947, 50-1603.

82-4-104. Application. The provisions of this part shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under 82-4-221 were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

History: En. 50-1617 by Sec. 17, Ch. 280, L. 1974; R.C.M. 1947, 50-1617.

82-4-105 through 82-4-110 reserved.

82-4-111. Orders and rules of board — hearings. The board shall:

(1) issue, after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part;

(4) conduct hearings under provisions of this part or rules adopted by the board.

History: En. 50-1604 by Sec. 4, Ch. 280, L. 1974; amd. Sec. 4, Ch. 441, L. 1975; R.C.M. 1947, 50-1604.

82-4-112. Administration. The department shall:

(1) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or permit issued pursuant to this part;

(3) order the halting of any operation that is started without first having secured a permit as required by this part;

(4) make investigations and inspections necessary to insure compliance with this part;

(5) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work;

(6) adopt rules with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration.

History: En. 50-1605 by Sec. 5, Ch. 280, L. 1974; amd. Sec. 5, Ch. 441, L. 1975; R.C.M. 1947, 50-1605.

82-4-113. Receipts paid into special fund — use of fund. All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to a special agency account to be designated as the mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this part and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this part until expended or until appropriated by subsequent legislative action.

History: En. 50-1610 by Sec. 10, Ch. 280, L. 1974; amd. Sec. 10, Ch. 441, L. 1975; R.C.M. 1947, 50-1610.

82-4-114 through 82-4-120 reserved.

82-4-121. Permit required. No person may commence preparatory work until the operator shall have first obtained from the department a mine-site location permit for a new strip mine or a new underground mine or a permit under part 2 of this chapter, if the application for such permit includes an appropriate long-range mining plan acceptable to the department.

History: En. 50-1606 by Sec. 6, Ch. 280, L. 1974; amd. Sec. 6, Ch. 441, L. 1975; R.C.M. 1947, 50-1606.

82-4-122. Application and approval of permit. (1) A person desiring a mine-site location permit shall file with the department an application which shall contain a reclamation plan for any preparatory work and such other information the department deems necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) The department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(1), (3).

82-4-123. Permit fee and surety bond. A fee of \$50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of

Montana with surety satisfactory to the department in the penal sum to be determined by the board on the recommendation of the commissioner of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(4).

82-4-124. Permit — authority under and renewal. A mine-site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of 1 year from the date of issuance and is renewable until the applicant has applied for and received a strip-mining or underground-mining permit in accordance with part 2 of this chapter.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(2).

82-4-125. Refusal of permit. (1) The department may not issue a permit under this part if it finds that a new strip mine or a new underground mine is not consistent with the purposes and policies of this part.

(2) The department shall not approve a new strip-mining site, a new underground-mining site, or preparatory work site for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in 82-4-227.

(3) The department shall not issue a permit under this part if a proposed reclamation plan does not meet the requirements of part 2 of this chapter.

History: En. 50-1608 by Sec. 8, Ch. 280, L. 1974; amd. Sec. 8, Ch. 441, L. 1975; R.C.M. 1947, 50-1608.

82-4-126. When information may be used to meet strip-mining or underground-mining permit requirements. The department may choose to accept information submitted under this part to the extent it is applicable and relevant as satisfying the requirements of part 2 of this chapter.

History: En. 50-1614 by Sec. 14, Ch. 280, L. 1974; amd. Sec. 11, Ch. 441, L. 1975; R.C.M. 1947, 50-1614.

82-4-127. Effect of siting permit on subsequent mining permits. When the department has sufficient information to approve or disapprove a mine-site location permit application on either the entire area being considered for a mine-site location permit or a portion thereof on the grounds listed in 82-4-227(2) and (4), it shall so state in a written statement to the operator. This decision is binding on the department with regard to strip-mining or

underground-mining permit applications as specified in part 2 of this chapter unless:

(1) new information is submitted or obtained in compliance with part 2 of this chapter which indicates a situation not existing or known at the time of the issuance of a permit under this part;

(2) an application under this part misrepresented information related to the criteria;

(3) a situation develops because of strip-mining or underground-mining operations which was not in existence at the time of the issuance of a permit under this part.

History: En. 50-1616 by Sec. 16, Ch. 280, L. 1974; amd. Sec. 13, Ch. 441, L. 1975; R.C.M. 1947, 50-1616.

82-4-128. Termination of permit. A mine-site location permit granted by the department in accordance with the provisions of this part shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine-site location permit for which a strip-mining or an underground-mining permit is granted pursuant to the provisions of part 2 of this chapter shall be released from the terms and provisions of the mine-site location permit.

History: En. 50-1615 by Sec. 15, Ch. 280, L. 1974; amd. Sec. 12, Ch. 441, L. 1975; R.C.M. 1947, 50-1615.

82-4-129. Noncompliance — suspension of permits. (1) If any of the requirements of this part or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this part, the department shall serve a notice of noncompliance on the operator or, where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

History: En. 50-1609 by Sec. 9, Ch. 280, L. 1974; amd. Sec. 9, Ch. 441, L. 1975; R.C.M. 1947, 50-1609.

82-4-130. Procedure for hearings and appeals. All hearing and appeal procedures shall be in accordance with the Montana Administrative Procedure Act.

History: En. 50-1613 by Sec. 13, Ch. 280, L. 1974; R.C.M. 1947, 50-1613.

82-4-131 through 82-4-140 reserved.

82-4-141. Violation — penalty. (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general 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 having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

History: En. 50-1611 by Sec. 11, Ch. 280, L. 1974; R.C.M. 1947, 50-1611.

82-4-142. Mandamus to compel enforcement. (1) A resident of this state, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce 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 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 the requirement or rule, the resident 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. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. 50-1612 by Sec. 12, Ch. 280, L. 1974; R.C.M. 1947, 50-1612; amd. Sec. 2, Ch. 201, L. 1979.

Part 2

Coal and Uranium Mine Reclamation

82-4-201. Short title. This part shall be known and may be cited as "The Montana Strip and Underground Mine Reclamation Act".

History: En. Sec. 1, Ch. 325, L. 1973; amd. Sec. 14, Ch. 441, L. 1975; R.C.M. 1947, 50-1034.

82-4-202. (Temporary) Policy — findings. (1) 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, archeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources; and

(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.

(2) The legislature hereby finds and declares that:

(a) in order to achieve the aforementioned policy objectives, 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 a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that all strip-mining and underground-mining operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that 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;

(b) this part be deemed 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 to be an exercise of the general police power to provide for the health and welfare of the people.

82-4-202. (Effective as provided in Compiler's Comment under 82-4-202) Policy — findings. (1) 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, archeologic, 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; and

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

(2) The legislature hereby finds and declares that:

(a) in order to achieve the aforementioned policy objectives, 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 a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted, that no permit 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, that certain other things must be done, that certain remedies are available, that 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 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 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 to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. Sec. 2, Ch. 325, L. 1973; amd. Sec. 15, Ch. 441, L. 1975; R.C.M. 1947, 50-1035; amd. Sec. 1, Ch. 550, L. 1979.

Compiler's Comments

Effective date — applicability. Sec. 19, Ch. 550, L. 1979, provided: "(1) This act does not become effective until the secretary of interior has conditionally or finally approved the state's permanent regulatory program under Public Law 95-87; however, rules pursuant to this act may be adopted pursuant to Title 2, chapter 4, prior to the effective date of this act and shall become effective only on the effective date of this act.

(2) Within 2 months of the secretary of interior's approval of the state's permanent regulatory program pursuant to section 503 of Public Law 95-87, as amended, each operator shall submit to the department a permit revision application to bring its permit into compliance with this act. The burden shall be on the applicant to demonstrate that the application complies with all the requirements of this act. The department shall make a written finding

granting or denying the application within 5 months of its submittal. Eight months after the secretary of interior's approval of the state's permanent regulatory program, no operator may conduct strip- or underground-mining operations unless the operator's permit has been revised to conform to the requirements of this act and approved by the department. Eight months after the secretary of interior's approval of the state's regulatory program, all strip- or underground-mining operations must be conducted in accordance with Title 82, chapter 2, part 4, as amended by this act."

Severability. Sec. 20, Ch. 550, L. 1979, provided: "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."

82-4-203. (Temporary) Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

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

(3) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining.

(4) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(5) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(6) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(7) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(8) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(9) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

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

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

(12) "Mineral" means coal and uranium.

(13) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(14) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden.

(15) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

(16) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(17) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

(18) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(19) "Strip mining" means any part of the process followed in the production of mineral by the open-cut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

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

(21) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

(22) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(23) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized.

(24) "Waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(25) "Written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part.

82-4-203. (*Effective as provided in Compiler's Comment under 82-4-202*) **Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

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

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(8) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(9) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(10) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(11) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(12) "Failure to conserve coal" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance

with reclamation standards established by the department shall not be considered failure to conserve coal.

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

(14) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

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

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

(17) "Minaable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(18) "Mineral" means coal and uranium.

(19) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area and all activities, including excavation incident thereto, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(20) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location.

(21) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

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

(23) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

(24) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

(25) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(26) "Strip mining" means any part of the process followed in the production of mineral by the open-cut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

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

(28) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

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

(30) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized and includes mining by in situ methods.

(31) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(32) "Waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(33) "Written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part.

History: En. Sec. 3, Ch. 325, L. 1973; amd. Sec. 1, Ch. 209, L. 1974; amd. Sec. 1, Ch. 235, L. 1974; amd. Sec. 16, Ch. 441, L. 1975; amd. Sec. 1, Ch. 538, L. 1975; R.C.M. 1947, 50-1036; amd. Sec. 2, Ch. 550, L. 1979.

82-4-204. (Temporary) Board orders, rules, and hearings. The board shall:

(1) issue, after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part;

(4) conduct hearings under provisions of this part or rules adopted by the board.

82-4-204. (*Effective as provided in Compiler's Comment under 82-4-202*) **Board orders, rules, and hearings.** The board shall:

(1) issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part;

(4) conduct hearings under provisions of this part or rules adopted by the board.

History: En. Sec. 4, Ch. 325, L. 1973; amd. Sec. 17, Ch. 441, L. 1975; R.C.M. 1947, 50-1037; amd. Sec. 3, Ch. 550, L. 1979.

82-4-205. (*Temporary*) **Administration by department of state lands.** The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, topsoiling, and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this part or any rule adopted under this part;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this part;

(5) shall make investigations and inspections necessary to insure compliance with this part;

(6) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration.

82-4-205. (*Effective as provided in Compiler's Comment under 82-4-202*) **Administration by department of state lands.** The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, topsoiling, and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this part or any rule adopted under this part;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(5) shall make investigations and inspections necessary to insure compliance with this part;

(6) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits, monitoring, and other matters of procedure and administration;

(8) may conduct hearings under the provisions of this part.

History: En. Sec. 5, Ch. 325, L. 1973; amd. Sec. 18, Ch. 441, L. 1975; R.C.M. 1947, 50-1038; amd. Sec. 4, Ch. 550, L. 1979.

82-4-206. Procedure for hearings and appeals. All hearings and appeal procedures shall be in accordance with parts 6 and 7 of chapter 4, Title 2.

History: En. Sec. 24, Ch. 325, L. 1973; R.C.M. 1947, 50-1057.

82-4-207 through 82-4-220 reserved.

82-4-221. (*Temporary*) **Mining permit required.** An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation, which designation shall include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit shall authorize the operator to engage in strip or underground mining upon the area of land described in his application and designated in the permit for a period of 5 years from the date of its issuance. Such permit shall be renewable upon each 5-year anniversary thereafter upon application to the department at least 30 but not more than 60 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules hereunder, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251.

82-4-221. (*Effective as provided in Compiler's Comment under 82-4-202*) **Mining permit required.** (1) An operator may not engage in

strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation, which designation shall include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit shall authorize the operator to engage in strip or underground mining upon the area of land described in his application and designated in the permit for a period of 5 years from the date of its issuance. Such permit shall be renewable upon each 5-year anniversary thereafter upon application to the department at least 30 but not more than 60 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules hereunder, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden shall be on the opponents of renewal to demonstrate that the permit should not be renewed. A permit shall terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at such time as the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of every permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person shall be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision shall be approved or disapproved within a reasonable time, depending on the scope and complexity, but in no case longer than 120 days. Applications for major revisions are subject to all the permit application requirements and procedures.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(1); amd. Sec. 5, Ch. 550, L. 1979.

82-4-222. (Temporary) Permit application. (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land

and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(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 of the surface of the area of land to be affected by the permit and the owners of record 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 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) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

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

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

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at such intervals as the department requires across the surface and shall run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations

to be excavated during the permit period. These cross sections shall also include all existing shafts, entries, and haulageways.

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any crospline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

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

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

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

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

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

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

(n) contain such other or further information as the department may require.

(3) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan

for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part.

82-4-222. (*Effective as provided in Compiler's Comment under 82-4-202*) **Permit application.** (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(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 of the surface of the area of land to be affected by the permit and the owners of record 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 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) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

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

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

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at such intervals as the department requires across the surface

and shall run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground-mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections shall also include all existing shafts, entries, and haulageways.

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

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

(m) a coal conservation plan; and

(n) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

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

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

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

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

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

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

(n) contain such other or further information as the department may require.

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

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

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

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk

and recorder at the courthouse of the county where the major portion of mining is proposed to occur.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(5) thru (7); amd. Sec. 1, Ch. 196, L. 1979; amd. Sec. 6, Ch. 550, L. 1979.

82-4-223. (Temporary) Permit fee and surety bond. (1) An application fee of \$50 shall be paid before the permit required in this part shall be issued.

(2) The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board, on the recommendation of the commissioner, of not less than \$200 or more than \$2,500 for each acre or fraction thereof of the area of land affected, with a minimum bond of \$2,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board may require the filing of the bond prior to permit issuance or at any time thereafter.

(3) In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

82-4-223. (Effective as provided in Compiler's Comment under 82-4-202) Permit fee and surety bond. (1) An application fee of \$50 shall be paid before the permit required in this part shall be issued.

(2) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board, on the recommendation of the commissioner, of not less than \$200 for each acre or fraction thereof of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board shall adjust the amount of bond required if the cost of reclamation changes.

(3) In determining the amount of the bond, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be

required, but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(8); amd. Sec. 7, Ch. 550, L. 1979.

82-4-224. Consent or waiver by surface owner. In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by strip-mining operations, the application for a permit shall include the written consent or a waiver by the owner or owners of the surface lands involved to enter and commence strip-mining operations on such land, except that nothing in this section applies when the mineral estate is owned by the federal government in fee or in trust for an Indian tribe.

History: En. 50-1039.1 by Sec. 2, Ch. 538, L. 1975; R.C.M. 1947, 50-1039.1.

82-4-225. (Temporary) Application for increase or reduction in permit area. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and shall pay an application fee of \$50 and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below \$2,000, except as provided in 82-4-223.

82-4-225. (Effective as provided in Compiler's Comment under 82-4-202) Application for increase or reduction in permit area. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and shall pay an application fee of \$50 and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the area of land affected, except for incidental boundary revisions. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below \$10,000, except as provided in 82-4-223.

History: En. Sec. 7, Ch. 325, L. 1973; amd. Sec. 2, Ch. 352, L. 1977; R.C.M. 1947, 50-1040; amd. Sec. 8, Ch. 550, L. 1979.

82-4-226. Prospecting permit. (1) On and after March 16, 1973, prospecting by any person on land not included in a valid strip-mining or

underground-mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

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

(3) The application shall be accompanied by a fee of \$100. This fee shall be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

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

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

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

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

History: En. Sec. 8, Ch. 325, L. 1973; amd. Sec. 20, Ch. 441, L. 1975; R.C.M. 1947, 50-1041; amd. Sec. 2, Ch. 196, L. 1979.

82-4-227. (Temporary) Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit shall not be

approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the part or rules will not be observed or that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistently with the purpose of this part.

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

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

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

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

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

(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved.

82-4-227. (*Effective as provided in Compiler's Comment under 82-4-202*) **Refusal of permit.** (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision shall not be approved by the department unless, on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the

affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that his application is in compliance with this part and the rules adopted under it.

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

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

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

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

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

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

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

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

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

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

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

(5) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of 82-4-232(3). Nothing in this subsection applies to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

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

(7) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. In no case may strip- or underground-coal-mining be allowed within 300 feet of any occupied dwelling, unless waived by the owner, nor within 300 feet of any public building, school, church, community, or institutional building, or public park; nor within 100 feet of a cemetery; nor within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line. The department may permit such roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) No strip- or underground-mining may be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. The department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

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

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

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

mining or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he is applying for a permit.

(10) No permit or major permit revision for a strip- or underground-coal-mining operation may be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that no failure to conserve coal will occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that any strip- or underground-coal-mining operation owned or controlled by the applicant is currently in violation of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department shall not issue a strip- or underground-coal-mining permit or major revision until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or major revision to any applicant which it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation which has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, of such a nature and duration and with such resulting irreparable damage to the environment to indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those which existed as of August 3, 1977, may be conducted on private lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress.

History: En. Sec. 9, Ch. 325, L. 1973; amd. Sec. 21, Ch. 441, L. 1975; R.C.M. 1947, 50-1042; amd. Sec. 9, Ch. 550, L. 1979.

82-4-228. (*Effective as provided in Compiler's Comment under 82-4-202*) **Designation of land unsuitable for coal mining.** (1) Any person having an interest that is or may be adversely affected may petition the department to have an area designated as unsuitable for strip- or underground-coal-mining operations or to have a designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition, the department shall hold a public hearing in the locality of the affected area after giving appropriate notice and publication of the date, time, and location thereof. Before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to

establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision regarding the petition and the reasons therefor. The hearing need not be held if all petitioners reach agreement prior to the requested hearing and withdraw their request.

(2) If petitioned, the department shall review the area petitioned for pursuant to this section and:

(a) shall designate it as an area unsuitable for all or certain types of strip- or underground-coal-mining operations if it is determined that reclamation pursuant to the requirements of this part is not technologically and economically feasible; and

(b) may designate it as an area unsuitable for all or certain types of strip or underground coal mining if the proposed coal mining operations will:

(i) be incompatible with existing state or local land-use plans or programs to the extent they affect mining in the area; or

(ii) affect fragile or historic lands in which these operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(iii) affect renewable resource lands in which these operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, these lands to include aquifers and aquifer recharge areas; or

(iv) affect natural hazard lands in which these operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology.

(3) Prior to designating any land areas as unsuitable for strip- or underground-coal-mining operations, the department shall prepare a detailed statement on:

(a) the potential coal resources of the area;

(b) the demand for coal resources; and

(c) the impact of this designation on the environment, economy, and supply of coal.

(4) A designation does not prevent mineral exploration pursuant to this part of any area so designated.

(5) The requirements of this section do not apply to lands on which strip or underground-coal-mining operations are being conducted pursuant to a permit issued under this part or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977.

History: En. Sec. 10, Ch. 550, L. 1979.

82-4-229 and 82-4-230 reserved.

82-4-231. (Temporary) Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of

operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended. The plan shall be submitted to the department, and the department shall notify the applicant by certified or registered mail within 120 days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the 120 days an additional 120 days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable, and it may propose modifications, delete areas, or reject the entire plan. A landowner, operator, or any person aggrieved by the decision of the department may by written notice request a hearing by the board. The board shall notify the person by certified or registered mail within 20 days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

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

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

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

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

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

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

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

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

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings upon abandonment.

(4) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land.

82-4-231. (*Effective as provided in Compiler's Comment under 82-4-202*) **Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards. The application for permit or major revision of a permit, which shall contain the reclamation plan, shall be submitted to the department. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed

operation after adequate public notice. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding. The department shall notify the applicant by certified or registered mail within 120 days after receipt of the complete application if it is or is not acceptable. The department may extend the 120 days an additional 120 days upon notification of the operator in writing. The department shall make written findings granting or denying the permit or revision application in whole or in part. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. A landowner, operator, or any person with an interest that is or may be adversely affected may by written notice request a hearing by the board. The hearing shall be held within 30 days of the request. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon. For purposes of the hearing, the board may order site inspections of the area pertinent to the application. The board shall notify the person by certified or registered mail and all other persons by regular mail within 20 days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

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

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

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

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

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

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

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

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

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize

land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

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

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

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface-water and ground-water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

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

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

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

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(4) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area.

History: En. Sec. 10, Ch. 325, L. 1973; amd. Sec. 22, Ch. 441, L. 1975; amd. Sec. 12, Ch. 39, L. 1977; R.C.M. 1947, 50-1043; amd. Sec. 11, Ch. 550, L. 1979.

82-4-232. (Temporary) Area mining required — bond — alternative plan. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

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

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, subsidence stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than \$200 per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(7) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining.

82-4-232. *(Effective as provided in Compiler's Comment under 82-4-202)* **Area mining required — bond — alternative plan.** (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

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

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

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

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

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

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

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

(5) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(6) When the backfilling, grading, subsidence stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner, after public notice and opportunity for hearing, may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than \$200 per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount. No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the

requirements set by this part or until soil productivity for prime farmlands mined for coal has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to this part. Where a silt dam is to be retained as a permanent impoundment, the portion of bond pertaining thereto may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department. Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release with the department within 30 days of public notice. The hearing shall be held at the state capital or, if an objector so requests, in the locality of the proposed bond release. For purposes of the hearing, the board may order site inspections of the area for which bond release is sought and other strip- or underground-mining operations carried on by the applicant in the area. Without prejudice to the rights of the objectors or the applicant or to the responsibilities of the department, the department may establish an informal conference to resolve written objections.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining.

History: En. Sec. 11, Ch. 325, L. 1973; amd. Sec. 23, Ch. 441, L. 1975; amd. Sec. 3, Ch. 352, L. 1977; R.C.M. 1947, 50-1044; amd. Sec. 1, Ch. 172, L. 1979; amd. Sec. 12, Ch. 550, L. 1979.

82-4-233. Planting of vegetation following grading of disturbed area. (1) After the operation has been backfilled, graded, topsoiled, and

approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees as are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

(2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

(3) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1) of this section.

History: En. Sec. 12, Ch. 325, L. 1973; amd. Sec. 24, Ch. 441, L. 1975; R.C.M. 1947, 50-1045; amd. Sec. 2, Ch. 172, L. 1979.

82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233.

History: En. Sec. 13, Ch. 325, L. 1973; amd. Sec. 25, Ch. 441, L. 1975; R.C.M. 1947, 50-1046; amd. Sec. 3, Ch. 196, L. 1979.

82-4-235. (Temporary) Planting report. Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing. In no event shall such remaining bond be released prior to a period of 5 years from the initial planting provided for in 82-4-233.

82-4-235. (Effective as provided in Compiler's Comment under 82-4-202) Planting report. Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall

release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). In no event shall such remaining bond be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

History: En. Sec. 14, Ch. 325, L. 1973; R.C.M. 1947, 50-1047; amd. Sec. 4, Ch. 196, L. 1979; amd. Sec. 13, Ch. 550, L. 1979.

82-4-236. Vegetation as property of landowner. All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this part or rules adopted under this part become the property of the landowner after complete release of the bond, unless the operator and the landowner agree otherwise.

History: En. Sec. 15, Ch. 325, L. 1973; R.C.M. 1947, 50-1048.

82-4-237. Operator to file annual reports. (1) An operator shall file an annual report with the department within 30 days of the anniversary date of each permit. Included within this report shall be:

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

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

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

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

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(2) thru (4); amd. Sec. 5, Ch. 196, L. 1979.

82-4-238. Successor operator. Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this part as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this part, and the successor operator assumes, as part of his obligation under this part, all liability for the reclamation of the area of land affected by the former operator.

History: En. Sec. 18, Ch. 325, L. 1973; R.C.M. 1947, 50-1051.

82-4-239. (Temporary) Reclamation by board. (1) The board may have reclamation work done by its own employees or by employees of other

governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this part.

82-4-239. (*Effective as provided in Compiler's Comment under 82-4-202*) **Reclamation by board.** (1) The board may have reclamation work done by its own employees or by employees of other governmental agencies, 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 board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this part. The board 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 such 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 commissioner, 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.

(4) If the department makes a finding of fact that:

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

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

(c) 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 such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices;

then agents, employees, or contractors of the department, after giving notice by mail to the owner, if known, or, if not known, by posting notice upon the premises and advertising in a newspaper of general circulation in the county in which the land lies, may enter upon property adversely affected by past coal-mining practices and any other property necessary for access to such mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices. This act is not an act of condemnation of property or of trespass but rather an exercise of the power granted by sections 1 and 2, Article IX 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 so expended and may file a statement thereof 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 so expended shall result in a significant increase in property value. Such 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. No lien may be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which 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 shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section shall 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 board may acquire the necessary property by gift or purchase or, 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) 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 acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices.

History: En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part); amd. Sec. 14, Ch. 550, L. 1979.

82-4-240. Reclamation of lands after bond forfeited. In keeping with the provisions of this part, the board may reclaim any affected lands

with respect to which a bond has been forfeited and use moneys appropriated from the mining and reclamation fund for such purposes.

History: En. Sec. 21, Ch. 325, L. 1973; amd. Sec. 28, Ch. 441, L. 1975; R.C.M. 1947, 50-1054.

82-4-241. Receipts paid into special fund — use of fund. All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to a special agency account to be designated as the mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this part and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this part until expended or until appropriated by subsequent legislative action.

History: En. Sec. 19, Ch. 325, L. 1973; amd. Sec. 26, Ch. 441, L. 1975; R.C.M. 1947, 50-1052.

82-4-242. Funds received by board. The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining or underground mining.

History: En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part).

82-4-243 through 82-4-250 reserved.

82-4-251. (Temporary) Noncompliance — suspension of permits.

(1) If any of the requirements of this part or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this part, the department shall serve a notice of noncompliance on the operator or, where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

82-4-251. (*Effective as provided in Compiler's Comment under 82-4-202*) **Noncompliance — suspension of permits.** (1) The commissioner or an authorized representative of the department shall, if he determines on the basis of an inspection that any condition or practices exist or that the permittee is in violation of any requirement of this part or any permit condition required by the part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, immediately order cessation of strip- or underground-coal-mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. The cessation order remains in effect until the commissioner or his authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). If the commissioner or his authorized representative finds that the ordered cessation of strip- or underground-coal-mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, he shall in addition to the cessation order impose affirmative obligations on the operator requiring him to take whatever steps the commissioner or his authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part which does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the commissioner or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner or his authorized representative, the commissioner or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of strip- or underground-mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order remains in effect until the commissioner or his authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the commissioner or his authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the commissioner or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions

or that such violations are willfully caused by the permittee, the commissioner or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the commissioner shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commissioner or his authorized representative shall forthwith suspend or the board shall revoke the permit. When a permit has been revoked, the board may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the strip- or underground-mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the department or the commissioner or his authorized representative who issues the notice or order. All such notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commissioner or his authorized representative, provided that any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) An operator issued a notice or an order of abatement pursuant to this section or any person having an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order may apply to the department for review of that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon receipt of the application, the department shall make an investigation. The investigation shall provide an opportunity for public hearing at the request of the applicant or the person having an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the commissioner or his authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

History: En. Sec. 17, Ch. 325, L. 1973; R.C.M. 1947, 50-1050; amd. Sec. 15, Ch. 550, L. 1979.

82-4-252. (Temporary) Mandamus. (1) A resident of this state, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce 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 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 the requirement or rule, the resident 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 duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

82-4-252. (Effective as provided in Compiler's Comment under 82-4-202) Mandamus. (1) A resident of this state or any person having an interest which 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 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 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 duties. If he fails to do so, the public officer or employee shall 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 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. However, no such action may 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 in any rule, order, or permit issued hereunder. Any person may intervene as a matter of right in any such civil action. Nothing in this section restricts any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted hereunder 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 subsection affects the rights established by or limits imposed under chapter 71 of Title 39.

(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 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.

History: En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975; R.C.M. 1947, 50-1055(1), (2); amd. Sec. 3, Ch. 201, L. 1979; amd. Sec. 16, Ch. 550, L. 1979.

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

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

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

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

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

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

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

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

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

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

History: En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975; R.C.M. 1947, 50-1055(3) thru (5).

82-4-254. (Temporary) Violation — penalty. (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general 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 having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

82-4-254. (Effective as provided in Compiler's Comment under 82-4-202) Violation — penalty. (1) A person or operator who violates any

of the provisions of this part, rules or orders adopted under this part, or permit, term, or condition and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than \$100 or more than \$5,000 for the violation and an additional civil penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board or department, or order of the commissioner shall be assessed a penalty of not less than \$750 for each day during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements.

(2) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(3) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of the part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(4) Any relief granted by a court under subsection (3)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(5) A person who violates any of the provisions of this part or any determination or order adopted under this part, or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(6) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(7) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(8) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

History: En. Sec. 23, Ch. 325, L. 1973; R.C.M. 1947, 50-1056; amd. Sec. 17, Ch. 550, L. 1979.

Part 3

Metal Mine Reclamation

82-4-301. Legislative findings. 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.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201.

82-4-302. Purpose. (1) The purposes of this part are to provide:

(a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;

(b) authority for cooperation between private and governmental entities in carrying this part into effect;

(c) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and

(d) priorities and values to the aesthetics of our landscape, waters, and ground cover.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(9) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(10) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining, that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining or exploration ceases.

(11) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(12) "Underground mining" means all methods of mining other than surface mining.

(13) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(14) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1979.

82-4-304. Exemption — works performed prior to promulgation of rules. No provision of this part shall be applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219; amd. Sec. 4, Ch. 201, L. 1979.

82-4-305. Exemption — small miners — written agreement. (1) No provisions of this part shall apply to any small miner when the small miner annually agrees in writing:

(a) that he shall not pollute or contaminate any stream;

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(c) he shall provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners or operators of said project to a fine of not less than \$10 or more than \$100, payable to the department of revenue of the state of Montana or any board, commission, or person authorized to collect said fine.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979.

82-4-306. Confidentiality of application information. Any and all information obtained by the board or by the director or his staff by virtue of applications for exploration licenses and all information obtained from small miners is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation; provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under a development or operating permit. It is further provided that any information obtained by the board or by the director or his staff by virtue of such applications is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of the part or rules has been determined by the department or by judicial order. Failure to comply

with the secrecy provisions of this part shall be punishable by a fine of up to \$1,000.

History: En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.

82-4-307. Review of existing files. Existing departmental files shall be reviewed, and their contents shall be segregated and available for public inspection to the same extent as new files under 82-4-306.

History: En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.1.

82-4-308. Release by waiver. An applicant may release the board and department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department.

History: En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.2.

82-4-309. Exemption — operations on federal lands. This part shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part.

History: En. Sec. 23, Ch. 252, L. 1971; R.C.M. 1947, 50-1223.

82-4-310. Exemption — sample collectors. This part shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding \$100 per year.

History: En. Sec. 24, Ch. 252, L. 1971; R.C.M. 1947, 50-1224.

82-4-311. Hard-rock mining account. All fees, fines, penalties, and other uncleared moneys which have been or will be paid to the department of state lands under the provisions of this part shall be placed in the earmarked revenue fund in the state treasury and credited to a special account to be designated as the hard-rock mining and reclamation account. This account shall be available to the department by appropriation and shall be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year shall not lapse but shall be carried forward for the purposes of this section until expended or until appropriated by subsequent legislative action.

History: En. 50-1227 by Sec. 1, Ch. 29, L. 1977; R.C.M. 1947, 50-1227.

82-4-312 through 82-4-320 reserved.

82-4-321. Administration. The board is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. The board may delegate such powers, duties, and functions to the department as it deems necessary for the performance of its duties as administrator of this part. The board shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974; R.C.M. 1947, 50-1204.

82-4-322. Investigations, research, and experiments. The board shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971; R.C.M. 1947, 50-1205.

82-4-323. Interagency cooperation — receipt and expenditure of funds. The board shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the board requests that they provide. The board may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in 82-4-336.

History: En. Sec. 6, Ch. 252, L. 1971; R.C.M. 1947, 50-1206.

82-4-324 through 82-4-330 reserved.

82-4-331. Exploration license required — employees included.

(1) No person shall engage in exploration in the state without first obtaining an exploration license from the board to do so, such license to be issued for a period of 1 year from date of issue and to be renewable from year to year on application therefor filed at any time within the 30 days next preceding the expiration of the current license and payment of like fee as required for a new license, provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law. Such license shall be subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part shall be deemed included in and covered by such license.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(part); amd. Sec. 3, Ch. 588, L. 1979.

82-4-332. Exploration license. (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of \$5 to the board;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the board;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by rule determine the precise nature of such exploration map or sketch. The applicant must state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of the certificate to the board.

(4) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(5) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(2); amd. Sec. 5, Ch. 201, L. 1979; amd. Sec. 4, Ch. 588, L. 1979.

82-4-333. Repealed. Sec. 8, Ch. 588, L. 1979.

82-4-334. Exception — geological phenomena. Upon proper application by the holder of an exploration license, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(6); amd. Sec. 5, Ch. 588, L. 1979.

82-4-335. Operating permit. No person shall engage in mining or disturb land in anticipation of mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of \$25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(1) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(2) minerals expected to be mined;

(3) a proposed reclamation plan;

(4) expected starting date of mining;

(5) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(6) types of access roads to be built and manner of reclamation of road sites on abandonment; and

(7) a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979.

82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of mining on that portion of mine complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(8) A reclamation plan shall be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209.

82-4-337. Inspection — issuance of operating permit — modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30 days of receipt.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of mining within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of mining within such time period, the operating permit shall be issued upon receipt of the bond as required in 82-4-338. The department shall promptly notify the applicant of the form and amount of bond which will be required. No permit may be issued until sufficient bond has been submitted pursuant to 82-4-338.

(c) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit shall be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979.

82-4-338. Performance bond. (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory

to the department in the penal sum to be determined by the department of not less than \$200 or more than \$2,500 for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this part and the rules of the board. In lieu of such bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.

(2) No bond filed in accordance with the provisions of this part shall be released by the department until the provisions of this part, the rules adopted pursuant thereto, and this reclamation plan have been fulfilled.

History: En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211.

82-4-339. Annual report of activities by permittee — fee. Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of \$25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

- (1) identify the permittee and the permit number;
- (2) locate the operation by subdivision, section, township, and range and with relation to the nearest town, or other well-known geographic feature;
- (3) estimate acreage to be newly disturbed by operation in the next 12-month period; and
- (4) update any maps previously submitted or specifically requested by the board. Such maps shall show:
 - (a) the permit area;
 - (b) the unit of disturbed land;
 - (c) the area to be disturbed during the next 12-month period;
 - (d) if completed, the date of completion of operations;
 - (e) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
 - (f) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

History: En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212.

82-4-340. Successor operator. When one operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor

operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(3).

82-4-341. Compliance with reclamation plan — reclamation by board. (1) Following receipt of the permittee's report and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules.

(2) The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, provided that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the board, reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

(4) If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the board or if reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or such longer period as may have been authorized hereunder or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment, and material under its control or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

(5) The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within 30 days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond. The permittee shall be liable for the remainder of the cost.

(6) In addition to the other liabilities imposed by this part, failure to commence action to remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years, or such longer period as the board may permit on permittee's application therefor or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same.

History: En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974; R.C.M. 1947, 50-1213.

82-4-342 through 82-4-350 reserved.

82-4-351. Reasons for denial of permit. (1) A permit may be denied for any of the following reasons:

(a) the plan of development, mining, or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit shall be in writing and state the reasons therefor.

History: En. Sec. 14, Ch. 252, L. 1971; R.C.M. 1947, 50-1214; amd. Sec. 1, Ch. 174, L. 1979.

82-4-352. Reapplication with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the board a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971; R.C.M. 1947, 50-1215.

82-4-353. Administrative remedies — notice — parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice shall be published once a week for 3 successive weeks.

(2) All hearings and appeal procedures shall be in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held hereunder upon a showing that such person is capable of adequately representing the interests claimed.

(3) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

History: En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977; R.C.M. 1947, 50-1216.

82-4-354 through 82-4-360 reserved.

82-4-361. Violation — penalties. (1) A person who violates any of the provisions of this part or rules or orders adopted under this part shall

pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general 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 having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

History: En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974; R.C.M. 1947, 50-1222.

82-4-362. Suspension of permits. (1) If any of the requirements of this part or the rules or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, where found necessary, the commissioner shall order the suspension of the permit. The notice or order shall be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance shall specify in what respects the operator has failed to comply with this part, the rules, or the reclamation plan.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

History: En. 50-1225 by Sec. 12, Ch. 281, L. 1974; R.C.M. 1947, 50-1225.

Part 4

Opencut Mining Reclamation

82-4-401. Short title. This part shall be known and may be cited as "The Opencut Mining Act".

History: En. Sec. 1, Ch. 326, L. 1973; R.C.M. 1947, 50-1501.

82-4-402. Policy. It is the policy of this state to provide for the reclamation and conservation of land subjected to opencut bentonite, clay, scoria, phosphate rock, sand, or gravel mining. Therefore, it is the purpose of this part to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or which may be affected by opencut bentonite, clay, scoria, phosphate rock, sand, or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic, or other unique areas, and to promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 326, L. 1973; amd. Sec. 2, Ch. 209, L. 1974; amd. Sec. 2, Ch. 235, L. 1974; R.C.M. 1947, 50-1502.

82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(2) "Board" means the state board of land commissioners.

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(4) "Final cut" means the last pit created in an opencut-mined area.

(5) "Highwall" means that side of the pit adjacent to unmined land.

(6) "Landowner" means the owner of land directly or indirectly affected by an opencut-mining operation.

(7) "Opencut mining" means the mining of bentonite, clay, scoria, phosphate rock, sand, or gravel by removing the overburden lying upon natural deposits thereof and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality, or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel.

(8) "Operator" means a person engaged in and controlling an opencut-mining operation.

(9) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel. "Spoil" is the overburden disturbed from its natural state in the process of opencut mining.

(10) "Person" means a natural person or a firm, association, partnership, cooperative, or corporation or any department, agency, or instrumentality of the state or any governmental subdivision or any other entity whatever.

(11) "Progress report" means a report showing the land which the operator has affected by opencut mining during the year. The report shall show the number of acres of affected land and all reclamation accomplished.

(12) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice shall be given once a week for 3 successive weeks.

(13) "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

(14) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas, and an explanation of proposed reclamation of the land with appropriate maps.

(15) "Refuse" means all waste material directly connected with the opencut-mining operations.

(16) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

History: En. Sec. 4, Ch. 326, L. 1973; amd. Sec. 4, Ch. 209, L. 1974; amd. Sec. 4, Ch. 235, L. 1974; amd. Sec. 17, Ch. 39, L. 1977; R.C.M. 1947, 50-1504.

82-4-404. Exemption — operations covered by metal mine reclamation. Nothing in this part may be construed to be applicable to

mining or exploration operations which are regulated under the provisions of part 3 of this chapter.

History: En. Sec. 18, Ch. 326, L. 1973; amd. Sec. 29, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.

82-4-405. Inapplicability to state and local government. The provisions of this part relating to fees or bonds do not apply to the state of Montana, counties, cities, or towns.

History: En. 50-1516.1 by Sec. 1, Ch. 81, L. 1975; amd. Sec. 30, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.1.

82-4-406. Exemption — operations on federal lands. This part is not applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering the land impose controls for reclamation of those lands equal to or greater than those imposed by this part.

History: En. 50-1517 by Sec. 1, Ch. 219, L. 1975; amd. Sec. 31, Ch. 39, L. 1977; R.C.M. 1947, 50-1517.

82-4-407 through 82-4-420 reserved.

82-4-421. Administration — delegation of functions. The board is the administrator of this part, and it has all the power necessary to implement and enforce it. The board may delegate to the commissioner of state lands such powers, duties, and functions under this part as it considers necessary for the performance of its duties.

History: En. Sec. 5, Ch. 326, L. 1973; amd. Sec. 18, Ch. 39, L. 1977; R.C.M. 1947, 50-1505.

82-4-422. Powers, duties, and functions of board. The board has the following powers, duties, and functions to:

(1) enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the board that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part;

(2) prepare and adopt rules pertaining to opencut mining to accomplish the purposes of this part;

(3) conduct hearings and, for the purposes of conducting such hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

(4) adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this part;

(5) reclaim any affected land with respect to which a bond has been forfeited; and

(6) make investigations or inspections which are considered necessary to insure compliance with any provision of this part.

History: En. Sec. 6, Ch. 326, L. 1973; amd. Sec. 19, Ch. 39, L. 1977; R.C.M. 1947, 50-1506.

82-4-423. Contracts for reclamation. The board is hereby authorized to enter into contracts with operators in the name of the state of Montana which will provide for the reclamation of lands on which opencut mining of bentonite, clay, scoria, phosphate rock, sand, and gravel has been or is to be conducted. The board is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and the board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: En. Sec. 3, Ch. 326, L. 1973; amd. Sec. 3, Ch. 209, L. 1974; amd. Sec. 3, Ch. 235, L. 1974; amd. Sec. 16, Ch. 39, L. 1977; R.C.M. 1947, 50-1503.

82-4-424. Receipt and expenditure of funds. (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The board may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining that have not been reclaimed and rehabilitated in accordance with the standards of this part.

History: En. Sec. 11, Ch. 326, L. 1973; amd. Sec. 24, Ch. 39, L. 1977; R.C.M. 1947, 50-1511.

82-4-425. Inspection of opencut mining by board. The board or its accredited representatives may enter upon lands subjected to opencut mining at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with.

History: En. Sec. 12, Ch. 326, L. 1973; amd. Sec. 25, Ch. 39, L. 1977; R.C.M. 1947, 50-1512.

82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part, the board may reclaim any affected lands with respect to which a bond has been forfeited.

History: En. Sec. 14, Ch. 326, L. 1973; amd. Sec. 27, Ch. 39, L. 1977; R.C.M. 1947, 50-1514.

82-4-427. Board hearing. (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act governs hearings before the board and judicial review of decisions of the board under this part.

History: En. Sec. 15, Ch. 326, L. 1973; amd. Sec. 28, Ch. 39, L. 1977; R.C.M. 1947, 50-1515.

82-4-428 through 82-4-430 reserved.

82-4-431. Contract for reclamation required. After March 16, 1973, no operator may conduct opencut-mining operations which will result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of

product or overburden in the aggregate, is subject to the provisions of this part.

History: En. Sec. 7, Ch. 326, L. 1973; amd. Sec. 20, Ch. 39, L. 1977; R.C.M. 1947, 50-1507.

82-4-432. Application for contract — contents — issuance — amendment. (1) Applications for a contract shall be made upon a form furnished by the board, which form shall contain the following:

- (a) the name of the operator and, if other than the owner of the land, the name and address of the owner;
 - (b) the type of operation to be conducted;
 - (c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume which has been previously removed, if any;
 - (d) the location of the operation by legal subdivision, section, township and range, and county;
 - (e) the date when the operation was or will be commenced; and
 - (f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands so described.
- (2) The application shall be accompanied by:
- (a) a bond or security meeting the requirements as set out in this part;
 - (b) a fee of \$50; and
 - (c) the operator's plan of his operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the board of his intention to submit a plan and requests the board to examine the area to be mined, the board shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(4) Upon receipt of the application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the board may issue a contract to the applicant which entitles him to continue in or engage in opencut mining on the land therein described.

(5) An operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the board. Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the board may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by contract, except affected land, by notifying the board thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part shall be reduced proportionately.

History: En. Sec. 8, Ch. 326, L. 1973; amd. Sec. 21, Ch. 39, L. 1977; R.C.M. 1947, 50-1508.

82-4-433. Bond. (1) A bond required to be filed in this part by the operator shall be in such form as the board prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part and all rules of the board. The bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana,

as surety. The penalty of the bond shall be in an amount not to exceed the costs of restoration required by this part as determined by the board but may not be less than \$200 or more than \$1,000 per acre.

(2) In lieu of the bond, the operator may deposit with the board cash and government securities or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the mined acreages have been reclaimed as provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or security shall cover only actual mined acreages and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the board pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The board shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, he shall notify the board thereof. If the board releases the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

History: En. Sec. 9, Ch. 326, L. 1973; amd. Sec. 22, Ch. 39, L. 1977; R.C.M. 1947, 50-1509.

82-4-434. Reclamation plan part of contract — requirements.

The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the board before commencing any open-cut mining and may not commence mining before the plan receives approval from the board. The operator may request and receive a meeting with the board prior to submission of the plan. If the board does not notify the operator that it has approved or disapproved a plan within 30 days after the board has received the plan, the board is considered to have approved the plan. The board, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original 30-day period. The board shall submit each reclamation plan or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The board may seek technical help from any state or federal agency. The board shall submit the plan immediately to the director of the university of Montana statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The board may approve a reclamation plan only if the board has found that the plan provides for the best

possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the board, it shall become a part of the contract but is subject to annual review and modification by the board.

(2) The board may not approve any reclamation plan unless the plan provides:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the board;

(i) that all operations will be conducted so as to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises which will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time.

(3) If reclamation according to the plan has not been completed in the time specified, the board after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the board a new reclamation plan or amendment to the existing plan, including extensions of time.

(b) The board may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the board in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than \$200 per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the board shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the board and the operator and shall remain in force until terminated by mutual consent or by the board upon 6 months' notice.

History: En. Sec. 10, Ch. 326, L. 1973; amd. Sec. 23, Ch. 39, L. 1977; R.C.M. 1947, 50-1510.

82-4-435. Operation without contract — penalty. Anyone required by this part to have a contract and who engages in opencut mining without previously securing a contract to do so as prescribed by this part is guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$500 and not more than \$1,000. Each day of operation without a contract required by this part is a separate violation.

History: En. Sec. 13, Ch. 326, L. 1973; amd. Sec. 26, Ch. 39, L. 1977; R.C.M. 1947, 50-1513.

APPENDIX A

Excerpts from

U.S. Forest Service/U.S. Department of Agriculture
Current Information Report No. 14
January 1975

and

National Forest Mineral Resources
USDA rules on prospecting, exploration and mining procedures
(effective 9-1-74)

[Reprinted from: Federal Register, vol. 39, no. 168 (8-28-74).]



Mining in National Forests

Regulations to Protect Surface Resources

Highlights of regulations

The regulations apply to the 140 million acres of National Forest lands subject to location and entry under the Mining Laws of 1872, that is, to the mining and prospecting of metallic and related nonmetallic minerals subject to those laws. They have no effect on the development of fossil fuels and other minerals subject to and already regulated under the mineral leasing laws or the laws governing the disposal of the "common variety" minerals.

The regulations provide the Forest Service and the mining community with the means of meeting their mutual environmental responsibilities to protect the surface resources of National Forest System lands. Among the main points covered by the regulations are the following:

- *Anyone proposing prospecting or mining operations under the 1872 mining laws in the National Forest System which might cause disturbance of surface resources must give the local Forest Service office a "notice of intention to operate." If the authorized forest officer determines that such operations will cause a significant disturbance to the environment, the operator must submit a proposed plan of operations. Of course, if an operator knows he will cause significant surface disturbance he should immediately submit a proposed plan. District Rangers can be helpful in preparing it, if necessary. The plan must describe such things as the type of operation proposed and how it will be conducted; proposed roads or access routes and means of transportation; and the time period during which the proposed activities will take place.
- *All operations must be conducted, so far as feasible, to minimize adverse environmental impacts on the National Forests, and take into consideration requirements for meeting Federal, State and local air and water quality standards and solid waste disposal, harmony with scenic values, protection of fish and wildlife habitats, and minimization of road construction damage.
- *The plan of operations must also show what steps the operator will take for feasible rehabilitation of the area when the prospecting or mining is completed.
- *Upon filing the plan of operations, the operator may be required to furnish a bond commensurate with the expected cost of rehabilitating the area.
- *The plan of operations must be approved by the authorized forest officer before any operations are conducted.

In analyzing each plan for approval, the forest officer will consider the economics of the operation along with other factors in determining the reasonableness of the requirements for surface resource protection. The Forest Service will assess the environmental impacts of the proposed operation and make any Environmental Impact Statements that might be required under the National Environmental Policy Act.

Any operator who disagrees with the decision of the authorized forest officer in connection with administration of the regulations, may appeal that decision, up to the Regional Forester. The decision of the Regional Forester will be the final administrative appeal decision. Aggrieved parties are thus provided quick access to the courts to seek redress.

Application to Wilderness

The regulations apply also to mining in wildernesses. The Act which created the National Wilderness Preservation System in 1964 specified that the laws pertaining to mining and mineral leasing on Federal lands should extend to wildernesses until 1983. The continued prospecting for minerals is authorized, but it must be conducted in a manner as compatible as possible with preservation of the wilderness environment.

Thus, operations within wildernesses are subject to the requirement of an approved operating plan to a greater extent than on National Forest land in general. The standards under which the regulations will be applied in wildernesses will be somewhat stiffer than on other lands. Special limitations and restrictions have been placed on the use of mechanized equipment because of its potential for causing surface disturbance and other impacts on the wilderness environment. Previously, the Forest Service required permits or other authorization for prospecting and mining in wildernesses. These requirements are now superseded by the Regulations, and an approved plan of operations is required.

In addition to designated wildernesses and primitive areas the Forest Service has inventoried nearly 56 million acres of roadless and undeveloped National Forest lands. A total of 274 of these areas, covering 12.3 million acres, have been selected as having high priority for detailed study to evaluate their suitability and availability for possible addition to the Wilderness System. Until recommendations are made as to which of these areas should become Wilderness units, they will be managed to protect them from activities which would dequalify them from Wilderness designation. Activities under the 1872 Mining Law are not precluded in these areas, but care will be taken to keep man's impact to a minimum so as not to foreclose possible Wilderness designation.

Title 36—Parks, Forests, and Public Property

Chapter II—Forest Service, Department of Agriculture

National Forests Surface Use Under U.S. Mining Laws

Regulations are hereby adopted concerning the use of the surface of National Forest System lands by persons operating under the United States mining laws of 1872, as amended. Parts 251 and 293 are amended and a new Part 252 is added.

The public was afforded an opportunity to comment on proposed rulemaking published on December 19, 1973 (38 FR 34817) and on July 16, 1974 (39 FR 26038). Respondents included Government agencies (National, State, and local), conservation organizations, mining associations, United States Senators and Congressmen, and individuals directly or indirectly concerned with mineral operations. The proposed regulations were also the subject of oversight hearings by the Public Lands Subcommittee of the Committee on Interior and Insular Affairs of the House of Representatives.

Comments ranged from total opposition to unqualified support of the proposals. Critical comments were in the majority. Many persons suggested changes or improvements in both wording and substance.

Although many respondents objected to the operating plan requirement, the essence of adequate regulation is development of operating plans which reflect both the necessities for environmental protection and for the use of surface resources in connection with mineral operations. A provision for operating plans is part of the regulations.

A major concern expressed by the mining industry, and noted by the Public Lands Subcommittee of the House Committee on Interior and Insular Affairs, is the possibility of unreasonable enforcement of the regulations, with resulting cost increases that could make otherwise viable mineral operations prohibitively expensive. The Forest Service recognizes that prospectors and miners have a statutory right, not mere privilege, under the 1872 mining law and the Act of June 4, 1897, to go upon and use the open public domain lands of the National Forest System for the purposes of mineral exploration, development and production. Exercise of that right may not be unreasonably restricted. Specific provision has been made in the operating plan approval section of the regulations charging Forest Service administrators with the responsibility to consider the economics of operations, along with the other factors, in determining the reasonableness of the requirements for surface resource protection.

Many comments objected to the time provided for Forest Service response to proposed operating plans. No change has been made in these provisions since the time allowances are reasonable as outside limits. Even so, Forest Service administrators are expected to process operating plans promptly with the objective of responding, on the average, in half the time allowed.

The requirement for a minimum bond of \$2,000 for any activities subject to operating plans was the provision most heavily criticized. Many respondents pointed to the discriminatory effect and negative impact on small miners and prospectors having relatively limited means. The bond provision has been changed to reduce discriminatory effects and to be more specific as to coverage, but remain responsive to the need to maintain the responsibilities of operators for reclamation and mitigation of the effects of surface disturbing operations.

Some respondents felt that all information and data submitted on proposed operations should be subject to full public disclosure. The rule of reasonableness is particularly applicable since proprietary data and competitive rights are involved. The section on availability of information to the public recognizes these factors.

Language has been modified to make more clear that the intent of these regulations is protection of the surface resources on National Forest System lands.

A number of comments noted the lack of a provision for a "notice of intent to operate." Such a provision has been included in the regulations.

The provision concerning data to be furnished in an operating plan has been simplified and is clarified to state that the Forest Service, rather than the operator, has the responsibility for analyzing the environmental impacts that may be expected from proposed operations.

Many respondents criticized the language about environmental impact statements and appeals procedures. Those sections have been clarified. The number of levels of appeal provided is small in order to allow aggrieved parties quick access to the courts to seek redress.

Seasonal factors in most of the western mountains preclude prospecting and exploration during winter and early spring. A 120-day grace period is provided within which to file required operating plans in the case of operations under way on the effective date of the regulations. Under the circumstances, the regulations should not have significant effect on ongoing operations during the remainder of this operating season.

A Final Environmental Statement, prepared in accordance with section 102(2) (c) of the National Environmental Policy Act of January 1, 1970 (42 U.S.C. 4332 (2) (C)), was filed with the Council on Environmental Quality on July 16, 1974. The statement discussed the environmental impact of issuing the regulations as proposed.

The regulations will be effective September 1, 1974.

The amendment of Chapter II follows:

PART 251—LAND USES

§ 251.12 [Revoked]

1. Part 251 is amended by revoking § 251.12.

PART 252—MINERALS

2. A new Part 252 is added to read as follows:

Sec.	
252.1	Purpose.
252.2	Scope.
252.3	Definitions.
252.4	Plan of operations—notice of intent—requirements.
252.5	Plan of operations—approval.
252.6	Availability of information to the public.
252.7	Inspection, noncompliance.
252.8	Requirements for environmental protection.
252.9	Maintenance during operations, public safety.
252.10	Cessation of operations, removal of structures and equipment.

- 252.11 Prevention and control of fire.
- 252.12 Access.
- 252.13 Bonds.
- 252.14 Appeals.
- 252.15 Operations within National Forest Wilderness.

AUTHORITY: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), unless otherwise noted.

§ 252.1 Purpose.

It is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21-54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of these regulations to provide for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior.

§ 252.2 Scope.

These regulations apply to operations hereafter conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.), as they affect surface resources on all National Forest System lands under the jurisdiction of the Secretary of Agriculture to which such laws are applicable: *Provided, however;* That any area of National Forest lands covered by a special Act of Congress (16 U.S.C. 482a-482q) is subject to the provisions of this part and the provisions of the special act, and in the case of conflict the provisions of the special act shall apply.

§ 252.3 Definitions.

For the purposes of this part the following terms, respectively, shall mean

- (a) *Operations.* All functions, work and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off mining claims.
- (b) *Operator.* A person conducting or proposing to conduct operations.
- (c) *Person.* Any individual, partnership, corporation, association, or other legal entity.
- (d) *Mining claim.* Any unpatented mining claim or unpatented millsite authorized by the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.)
- (e) *Authorized officer.* The Forest Service officer to whom authority to review and approve operating plans has been delegated.

§ 252.4 Plan of Operations—Notice of Intent—Requirements.

(a) Except as provided in paragraph (2) of this section, a notice of intention to operate is required from any person proposing to conduct operations which might cause disturbance of surface resources. Such notice of intention shall be submitted to the District Ranger having jurisdiction over the area in which the operations will be conducted. If the District Ranger determines that such operations will likely

cause significant disturbance of surface resources, the operator shall submit a proposed plan of operations to the District Ranger.

(1) The requirements to submit a plan of operations shall not apply (i) to operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest purposes, (ii) to individuals desiring to search for and occasionally remove small mineral samples or specimens, (iii) to prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study, (iv) to marking and monumenting a mining claim and (v) to subsurface operations which will not cause significant surface resource disturbance.

(2) A notice of intent need not be filed (i) where a plan of operations is submitted for approval in lieu thereof, (ii) for operations excepted in paragraph (1) of this section from the requirement to file a plan of operations, (iii) for operations which will not involve the use of mechanized earthmoving equipment such as bulldozers or backhoes and will not involve the cutting of trees. Each notice of intent to operate shall provide information sufficient to identify the area involved, the nature of the proposed operations, the route of access to the area of operations and the method of transport. If a notice of intent is filed, the District Ranger will, within 15 days of receipt thereof, notify the operator whether a plan of operations is required.

(b) Any person conducting operations on the effective date of these regulations, who would have been required to submit a plan of operations under § 252.4 (a), may continue operations but shall within 120 days thereafter submit a plan of operations to the District Ranger having jurisdiction over the area within which operations are being conducted: *Provided, however,* That upon a showing of good cause the authorized officer will grant an extension of time for submission of a plan of operations, not to exceed an additional 6 months. Operations may continue according to the submitted plan during its review, unless the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable damage to surface resources and advises the operator of those measures needed to avoid such damage. Upon approval of a plan of operations, operations shall be conducted in accordance with the approved plan. The requirement to submit a plan of operations shall not apply (1) to operations excepted in § 252.4(a) or (2) to operations concluded prior to the effective date of the regulations in this part.

(c) The plan of operations shall include:

(1) The name and legal mailing address of the operators (and claimants if they are not the operators) and their lessees, assigns, or designees.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads or access routes to be used in connection with the operations as set forth in § 252.12 and the approximate location and size of areas where surface resources will be disturbed.

(3) Information sufficient to describe or identify the type of operations proposed and how they would be conducted, the type and standard of existing and proposed roads or access routes, the means of transportation used or to be used as set forth in § 252.12, the period during which the proposed activity will take place, and measures to be taken to meet the requirements for environmental protection in § 252.8.

(d) The plan of operations shall cover the requirements set forth in paragraph (c) of this section, as foreseen for the entire operation for the full estimated period of activity: *Provided, however,* That if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any significant surface disturbance not covered by the initial plan.

(e) At any time during operations under an approved plan of operations, the authorized officer may ask the operator to furnish a proposed modification of the plan detailing the means of minimizing unforeseen significant disturbance of surface resources. If the operator does not furnish a proposed modification within a time deemed reasonable by the authorized officer, the authorized officer may recommend to his immediate superior that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth in detail the supporting facts and reasons for his recommendations. In acting upon such recommendation, the immediate superior of the authorized officer shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations prior to approving the operating plan, (2) whether the disturbance is or probably will become of such significance as to require modification of the operating plan in order to meet the requirements for environmental protection specified in § 252.8 and (3) whether the disturbance can be minimized using reasonable means. Lacking such determination that unforeseen significant disturbance of surface resources is occurring or probable and that the disturbance can be minimized using reasonable means, no operator shall be required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan until a modified plan is approved, unless the immediate superior of the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable injury, loss or damage to surface resources and advises the operator of those measures needed to avoid such damage.

(f) Upon completion of an environmental analysis in connection with each proposed operating plan, the authorized officer will determine whether an environmental statement is required. Not every plan of operations, supplemental plan or modification will involve the preparation of an environmental statement. Environmental impacts will vary substantially depending on whether the nature of operations is prospecting, exploration, development, or processing, and on the scope of operations (such as size of operations, construction required, length of operations and equipment required), resulting in varying degrees of disturbance to vegetative resources, soil, water, air, or wildlife. The Forest Service will prepare any environmental statements that may be required.

§ 252.5 Plan of Operations—Approval.

(a) Operations shall be conducted in accordance with an approved plan of operations, except as provided in section (b) of this section and in § 252.4(a), (b),

and (e). A proposed plan of operation shall be submitted to the District Ranger, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within thirty (30) days of such receipt, analyze the proposal, considering the economics of the operation along with the other factors in determining the reasonableness of the requirements for surface resource protection, and;

(1) Notify the operator that he has approved the plan of operations, or

(2) Notify the operator that the proposed operations are such as not to require an operating plan; or

(3) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purpose of the regulations in this part; or

(4) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed: *Provided, however*, That days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period; or

(5) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in § 252.4(f).

(b) Pending final approval of the plan of operations, the authorized officer will approve such operations as may be necessary for timely compliance with the requirements of Federal and State laws, so long as such operations are conducted so as to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 252.8.

(c) A supplemental plan or plans of operations provided for in § 252.4(d) and a modification of an approved operating plan as provided for in § 252.4(e) shall be subject to approval by the authorized officer in the same manner as the initial plan of operations: *Provided, however*, That a modification of an approved plan of operations under § 252.4(e) shall be subject to approval by the immediate superior of the authorized officer in cases where it has been determined that a modification is required.

(d) In the provisions for review of operating plans, the Forest Service will arrange for consultation with appropriate agencies of the Department of the Interior with respect to significant technical questions concerning the character of unique geologic conditions and special exploration and development systems, techniques, and equipment, and with respect to mineral values, mineral resources, and mineral reserves. Further, the operator may request the Forest Service to arrange for similar consultations with appropriate agencies of the U.S. Department of the Interior for a review of operating plans.

§ 252.6 Availability of information to the public.

Except as provided herein, all information and data submitted by an operator pursuant to the regulations in this part shall be available for examination by the public at the Office of the District Ranger in accordance with the provisions of 7 CFR

1.1-1.6 and 36 CFR 200.5-200.10. Specifically identified information and data submitted by the operator as confidential concerning trade secrets or privileged commercial or financial information will not be available for public examination. Information and data to be withheld from public examination may include, but is not limited to, known or estimated outline of the mineral deposits and their location, attitude, extent, outcrops, and content, and the known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws, and other commercial information which relates to competitive rights of the operator.

§ 252.7 Inspection, noncompliance.

(a) Forest Officers shall periodically inspect operations to determine if the operator is complying with the regulations in this part and an approved plan of operations.

(b) If an operator fails to comply with the regulations or his approved plan of operations and the noncompliance is unnecessarily or unreasonably causing injury, loss or damage to surface resources the authorized officer shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action is to be completed, generally not to exceed thirty (30) days: *Provided, however,* That days during which the area of operations is inaccessible shall not be included when computing the number of days allowed for compliance.

§ 252.8 Requirements for Environmental Protection.

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a) *Air Quality.* Operators shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(b) *Water Quality.* Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.).

(c) *Solid Wastes.* Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d) *Scenic Values.* Operators shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of

operations, and construction of structures and improvements which blend with the landscape.

(e) *Fisheries and Wildlife Habitat.* In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f) *Roads.* Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations (1) shall be closed to normal vehicular traffic, (2) bridges and culverts shall be removed, (3) cross drains, dips, or water bars shall be constructed, and (4) the road surface shall be shaped to as near a natural contour as practicable and be stabilized.

(g) *Reclamation.* Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control on-site and off-site damage to the environment and forest surface resources including:

- (1) Control of erosion and landslides;
- (2) Control of water runoff;
- (3) Isolation, removal or control of toxic materials;
- (4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and
- (5) Rehabilitation of fisheries and wildlife habitat.

(h) Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations.

§ 252.9 Maintenance during operations, public safety.

During all operations operator shall maintain his structures, equipment, and other facilities in a safe, neat and workmanlike manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced or otherwise identified to protect the public in accordance with Federal and State laws and regulations.

§ 252.10 Cessation of operations, removal of structures and equipment.

Unless otherwise agreed to by the authorized officer, operator shall remove within a reasonable time following cessation of operations all structures, equipment and other facilities and clean up the site of operations. Other than seasonally, where operations have ceased temporarily, an operator shall file a statement with the District Ranger which includes (1) verification of intent to maintain the structures, equipment and other facilities, (2) the expected reopening date, and (3) an estimate of extended duration of operations. A statement shall be filed every year in the event operations are not reactivated. Operator shall maintain the operating site, structures, equipment and other facilities in a neat and safe condition during non-operating periods.

§ 252.11 Prevention and control of fire.

Operator shall comply with all applicable Federal and State fire laws and regulations and shall take all reasonable measures to prevent and suppress fires on the area of operations and shall require his employees, contractors and subcontractors to do likewise.

§ 252.12 Access.

An operator is entitled to access in connection with operations, but no road, trail, bridge, landing area for aircraft, or the like, shall be constructed or improved, nor shall any other means of access, including but not limited to off-road vehicles, be used until the operator has received approval of an operating plan in writing from the authorized officer when required by § 252.4(a). Proposals for construction, improvement or use of such access as part of a plan of operations shall include a description of the type and standard of the proposed means of access, a map showing the proposed route of access, and a description of the means of transportation to be used. Approval of the means of such access as part of a plan of operations shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest surface resources, including measures to protect scenic values and to insure against erosion and water or air pollution.

§ 252.13 Bonds.

(a) Any operator required to file a plan of operations shall, when required by the authorized officer, furnish a bond conditioned upon compliance with § 252.8(g), prior to approval of such plan of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in accordance with § 252.4(d) and (e) of this part, the authorized officer will review the initial bond for adequacy and, if necessary, will adjust the bond to conform to the operations plan as modified.

(d) When reclamation has been completed in accordance with § 252.8(g), the authorized officer will notify the operator that performance under the bond has been completed: *Provided, however,* That when the Forest Service has accepted as completed any portion of the reclamation, the authorized officer shall notify the operator of such acceptance and reduce proportionally the amount of bond thereafter to be required with respect to the remaining reclamation.

§ 252.14 Appeals.

(a) Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file with the authorized officer a written

statement setting forth in detail the respects in which the decision complained of is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary, or is otherwise in error. No such appeal will be considered unless it is filed with the authorized officer within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of appellant's statement, the authorized officer shall promptly prepare his own statement explaining his decision and the reasons therefor and forward the statements and record to his immediate superior for review and decision. The decision of the Regional Forester shall be the final administrative appeal decision.

(b) At the time appellant files his written statement of appeal he may request and shall be afforded an opportunity to present his views orally to the reviewing Forest Service officer.

(c) If the reviewing Forest Service officer considers the record inadequate to support a decision on the appeal, he may provide for the production of such additional evidence or information as may be appropriate or may remand the case with appropriate instructions for further action.

(d) The official files of the Forest Service relating to these appeals and any testimony and documents submitted by the parties on which the decision of the authorized officer was based constitute the record in the appeal. The authorized officer shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to his immediate superior for review. The Forest Service shall make the record available to the appellant upon request.

(e) On or before the expiration of forty-five (45) days after his receipt of the record the reviewing officer shall make his decision: *Provided, however,* That if more than forty-five (45) days are required for a decision after the record is received, the reviewing officer shall notify the parties to the appeal and specify the reason for delay. The decisions of reviewing officers shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based.

(f) A decision of the authorized officer from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the reviewing officer. The reviewing officer shall promptly rule on requests for stays. The decision of the Regional Forester on requests for stays shall constitute the final administrative appeal decision.

§ 252.15 Operations within national forest wilderness.

(a) The United States mining laws shall extend to each National Forest Wilderness for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. Subject to valid existing rights, no person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws cease to apply to the specific Wilderness.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any National Forest Wilderness on or after the date on which said Wilderness was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. Persons conducting operations as defined in § 252.3 in National Forest Wilderness shall comply with the regulations in this part. Operations shall be conducted so as to protect National Forest surface resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and to preserve its wilderness character, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, water lines, telephone lines, and processing operations, including, where essential, the use of mechanized transport, aircraft or motorized equipment.

(c) Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness. No operator shall construct roads across National Forest Wilderness unless authorized in writing by the Forest Supervisor in accordance with § 252.12.

(d) On all mining claims validly established on lands within the National Wilderness Preservation System, the operator shall take all reasonable measures to remove any structures, equipment and other facilities no longer needed for mining purposes in accordance with the provisions in § 252.10 and restore the surface in accordance with the requirements in § 252.8(g).

(e) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations.

PART 293—WILDERNESS-PRIMITIVE AREAS

3. The regulations of Part 293 were transferred from Part 251 on March 5, 1973 (38 FR 5851). The new Part 293 is further amended by revising §§ 293.13, 293.14 and 293.15. Regulations applicable to activities under the 1872 mining law in National Forest Wilderness now appear in Part 252 rather than Part 293.

Sections 293.13-293.15 are revised to read as follows:

§ 293.13 Access to valid occupancies.

Persons with valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

§ 293.14 Mineral leases and mineral permits.

(a) All laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. No person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(c) Permits shall not be issued for the removal of mineral materials commonly known as "common varieties" under the Minerals Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601-604).

§ 293.15 Gathering Information about Resources other than Minerals.

(a) The Chief, Forest Service, shall allow any activity, for the purpose of gathering information about resources, other than minerals, in National Forest Wilderness, except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment. Prospecting for minerals or any activity for the purpose of gathering information about minerals in National Forest Wilderness is subject to the regulations in Part 252 of this title.

(b) No overland motor vehicle or other form of mechanical overland transport may be used in connection with any activity for the purpose of gathering infor-

mation about resources, other than minerals, except as authorized by the Chief, Forest Service.

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about resources, other than minerals, shall apply in writing to the Office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Excavations shall be considered "substantial" which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section (4)(d) (4) (1) of the Wilderness Act, will be permitted when and as authorized by the President.

30 Stat. 35, as amended (16 U.S.C. 551); 78 Stat. 890 (16 U.S.C. 1131-1136).

Paul A. Vander Myde
Deputy Assistant Secretary for Conservation,
Research and Education.

August 23, 1974.

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APPENDIX B

MINING PARTNERSHIPS

Part I — Formation

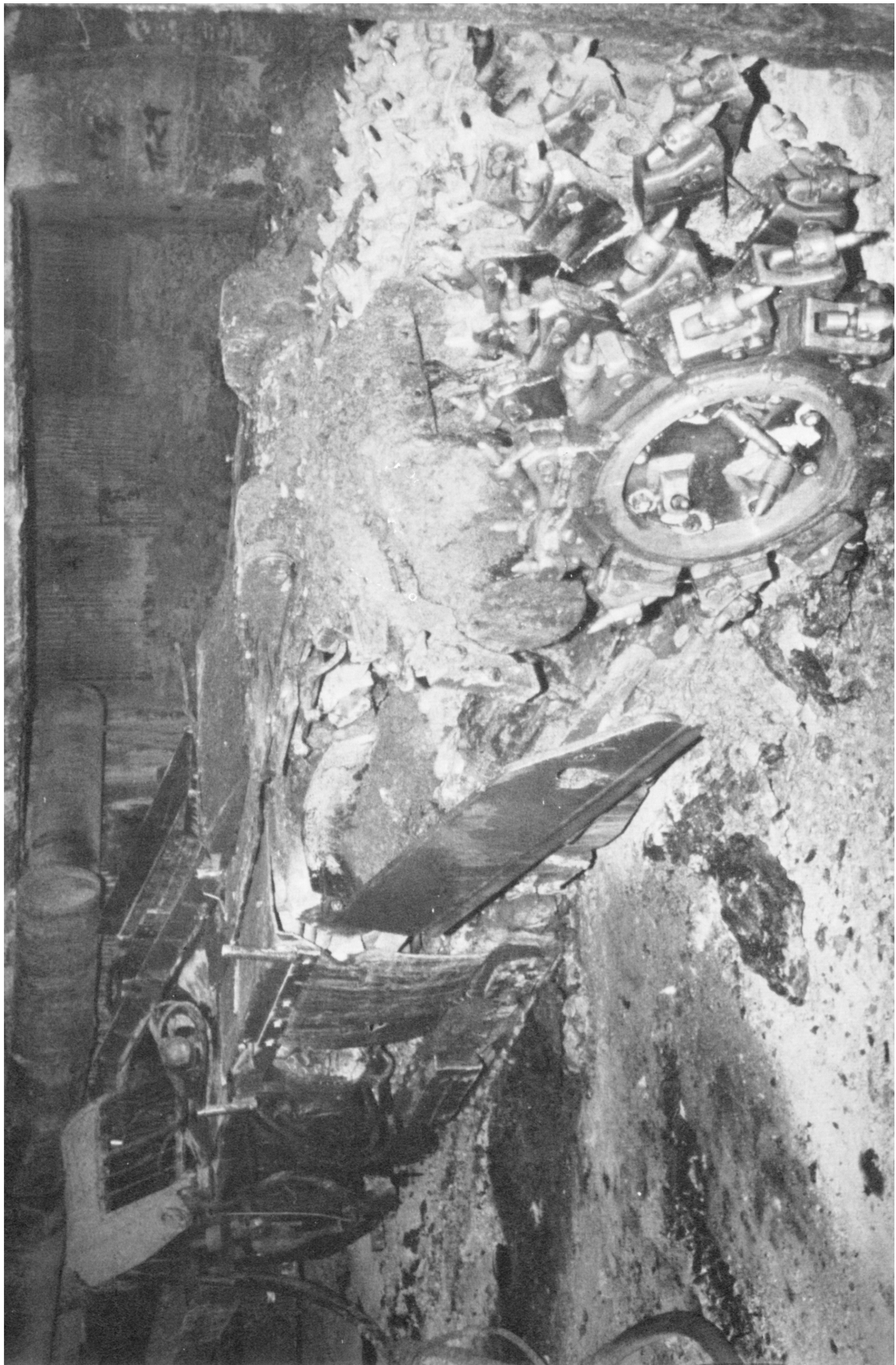
Section

35-13-101. When a mining partnership exists.

35-13-102. Express agreement not necessary to formation.

Part II — Relations Between Partners and with Third Persons

35-13-201. When contract in writing is binding.



Part 1—Formation

35-13-101. When a mining partnership exists. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

History: En. Sec. 3350, Civ. C. 1895; re-en. Sec. 5535, Rev. C. 1907; re-en. Sec. 8050, R.C.M. 1921; Cal. Civ. C. Sec. 2511; re-en. Sec. 8050, R.C.M. 1935; R.C.M. 1947, 63-1001.

35-13-102. Express agreement not necessary to formation. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

History: En. Sec. 3351, Civ. C. 1895; re-en. Sec. 5536, Rev. C. 1907; re-en. Sec. 8051, R.C.M. 1921; Cal. Civ. C. Sec. 2512; re-en. Sec. 8051, R.C.M. 1935; R.C.M. 1947, 63-1002.

Part 2—Relations Between Partners and with Third Persons

35-13-201. When contract in writing is binding. No member of a mining partnership or other agent or manager thereof can by a contract in writing bind the partnership, except by express authority derived from the members thereof.

History: En. Sec. 3358, Civ. C. 1895; re-en. Sec. 5543, Rev. C. 1907; re-en. Sec. 8058, R.C.M. 1921; Cal. Civ. C. Sec. 2519; re-en. Sec. 8058, R.C.M. 1935; R.C.M. 1947, 63-1009.

35-13-202. Owners of majority interest govern. The decision of the members owning a majority of the shares or interest in a mining partnership binds it in the conduct of its business.

History: En. Sec. 3359, Civ. C. 1895; re-en. Sec. 5544, Rev. C. 1907; re-en. Sec. 8059, R.C.M. 1921; Cal. Civ. C. Sec. 2520; re-en. Sec. 8059, R.C.M. 1935; R.C.M. 1947, 63-1010.

35-13-203. Mine — partnership property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

History: En. Sec. 3354, Civ. C. 1895; re-en. Sec. 5539, Rev. C. 1907; re-en. Sec. 8054, R.C.M. 1921; Cal. Civ. C. Sec. 2515; re-en. Sec. 8054, R.C.M. 1935; R.C.M. 1947, 63-1005.

35-13-204. Profits and losses — how shared. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

History: En. Sec. 3352, Civ. C. 1895; re-en. Sec. 5537, Rev. C. 1907; re-en. Sec. 8052, R.C.M. 1921; Cal. Civ. C. Sec. 2513; re-en. Sec. 8052, R.C.M. 1935; R.C.M. 1947, 63-1003.

35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors hereof and for money advanced by him for its uses. This lien exists notwithstanding here is an agreement among the partners that it must not.

History: En. Sec. 3353; Civ. C. 1895; re-en. Sec. 5538, Rev. C. 1907; re-en. Sec. 8053, R.C.M. 1921; Cal. Civ. C. Sec. 2514; re-en. Sec. 8053, R.C.M. 1935; R.C.M. 1947, 63-1004.

35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser from the date of his purchase becomes a member of the partnership.

History: En. Sec. 3355, Civ. C. 1895; re-en. Sec. 5540, Rev. C. 1907; re-en. Sec. 8055, R.C.M. 1921; Cal. Civ. C. Sec. 2516; re-en. Sec. 8055, R.C.M. 1935; R.C.M. 1947, 63-1006.

35-13-207. Purchaser takes subject to liens — exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof or advances made for the benefit of the partnership unless he purchased in good faith for a valuable consideration without notice of such lien.

History: En. Sec. 3356, Civ. C. 1895; re-en. Sec. 5541, Rev. C. 1907; re-en. Sec. 8056, R.C.M. 1921; Cal. Civ. C. Sec. 2517; re-en. Sec. 8056, R.C.M. 1935; R.C.M. 1947, 63-1007.

35-13-208. When purchaser takes with notice of liens. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

History: En. Sec. 3357, Civ. C. 1895; re-en. Sec. 5542, Rev. C. 1907; re-en. Sec. 8057, R.C.M. 1921; Cal. Civ. C. Sec. 2518; re-en. Sec. 8057, R.C.M. 1935; R.C.M. 1947, 63-1008.

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