HOUSE BILL NO. 576

INTRODUCED BY R. KNUDSEN, J. HINKLE, S. GUNDERSON, S. VINTON, S. GIST, K. WALSH, M. BINKLEY, G. PARRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WATER AND COAL MINING; PROVIDING THAT NONSIGNIFICANT CHANGES IN WATER QUALITY INCLUDE COAL OPERATIONS ADJACENT TO EPHEMERAL DRAINAGEWAYS AND INTERMITTENT STREAMS UNDER CERTAIN CONDITIONS; REVISING THE DEFINITION OF "MATERIAL DAMAGE" TO INCLUDE THE EFFECT OF COAL MINING ON THE HYDROLOGIC BALANCE; PROVIDING FOR MEDIATION BETWEEN PERMITEES AND ADJACENT LANDOWNERS; PROVIDING RULEMAKING AUTHORITY; DIRECTING AN AMENDMENT TO 17.24.301 TO REMOVE CERTAIN DEFINITIONS; AMENDING SECTIONS 75-5-317, ~~AND~~ 82-4-203, AND 82-4-222, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Department to amend rule.** The department of environmental quality shall amend ARM 17.24.301 to remove the two subsections defining "material damage" and the subsection defining "materially damage the quantity or quality of water".

Section 2. Section 75-5-317, MCA, is amended to read:

"**75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully

protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

(j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not

result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(m) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;

(o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;

(s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

(t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term;

(u) discharges of total phosphorus or total nitrogen that do not:

(i) create conditions that are toxic or harmful to human, animal, plant, and aquatic life;

(ii) create conditions that produce undesirable aquatic life; or

(iii) cause measurable changes in aquatic life; ~~and~~

(v) coal mining and reclamation activities that may affect the water quality of an adjacent ephemeral drainageway or intermittent stream for which the nonanthropogenic condition of the drainageway or stream exceeds the water quality standard and for which an applicant has prepared an acceptable hydrologic reclamation plan developed under Title 82, chapter 4, part 2, that demonstrates no change in the water quality classification for the affected drainageway or stream. For the purposes of this subsection (2)(v), "ephemeral drainageway" and "intermittent stream" have the meanings provided in 82-4-203.

~~(v)~~(w) any other activity that is ~~nonsignficant~~ nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

Section 3. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) "Affected drainage basin" means an area of land where surface water and ground water quality and quantity are affected by mining activities and where they drain to a common point.

(4) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(5) "Approximate original contour" means that surface configuration achieved by backfilling and

grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

(6) "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 that permit or have the potential to permit economic development as a water source.

(7) (a) "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.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) 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;

(iii) 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

(iv) all activities necessary and incident to the reclamation of the mining operations.

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

(9) "Board" means the board of environmental review provided for in 2-15-3502.

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

(11) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(12) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(13) "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 are 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.

(14) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(15) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

(16) "Department" means the department of environmental quality provided for in 2-15-3501.

(17) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(18) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

(19) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

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

(21) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(22) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(23) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(24) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(25) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

(26) "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 the 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 willingly be exposed to the danger during the time necessary for abatement.

(27) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(28) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

(b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated by the board of oil and gas conservation pursuant to Title 82, chapter 11.

(29) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(30) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

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

(32) "Material damage" means~~,~~:

(a) with respect to protection of the hydrologic balance, significant long-term or permanent degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected~~,~~ ~~water quality standards are violated,~~ or water rights are impacted~~;~~. ~~Violation of a water quality standard, whether or not an existing water use is affected, is material damage.~~

(b) with respect to an alluvial valley floor and subject to 82-4-222(9), changes in the quality or quantity of the water supply to any portion of the alluvial valley floor when the changes are caused by coal mining and reclamation operations and result in further changes that significantly decrease the capability of the alluvial valley floor to support subirrigation or flood irrigation for agricultural activities; and

(c) with respect to subsidence caused by an underground coal mining operation:

(i) any functional impairment of surface lands, features, or structures;

(ii) any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(iii) any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.

(33) "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.

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

(35) "Mineral" means coal and uranium.

(36) "Operation" means:

(a) 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, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(37) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) 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;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

(38) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(39) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(40) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

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

(42) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

(43) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

(44) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

(45) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

(46) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

(47) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced

naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(48) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(49) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(50) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

(51) (a) "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 that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that 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.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

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

(53) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person 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 income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

(54) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material,

climate, macroorganisms 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.

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

(56) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

(57) "Waiver" means a document that 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.

(58) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

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

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

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

(a) the location and area of land to be affected by the operation, with a description of access to the

area from the nearest public highways;

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

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

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

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

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

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, 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. If so, the applicant shall certify the fact. The information required in this subsection (1)(g) must be updated and approved by the department in the event of a change in the parties specified in this subsection (1)(g)(i) as a result of bankruptcy or reorganization.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) 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. If so, a detailed explanation of the facts involved in each case must be attached.

(iii) evidence, determined by department rule and in accordance with 82-4-231, that the parties or persons specified in subsection (1)(g)(i) will provide bonding or other financial assurance necessary to meet their financial [obligations for employee pensions and] obligations to reclaim property in accordance with the requirements of 82-4-231 through 82-4-234. [An operator may not pass the costs associated with the financial obligations for employee pensions established in this subsection (1)(g)(iii) on to purchasers served by the strip or underground mine if the purchasers are dependent on the mine to generate electricity that is consumed by electric customers.]

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal

regulatory authority;

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

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

(k) the results of any test borings or core samplings that the applicant or the applicant's 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 the minerals, including the acidity, sulfur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must 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 must also include all existing shafts, entries, and haulageways.

(l) the name of a newspaper of general circulation in the locality of the proposed activity in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted. If that newspaper is not published in Montana, the applicant shall also provide the name of a newspaper of general circulation in the county in which the proposed operation is located that is published in Montana in which the applicant will publish an announcement and description in accordance with this subsection.

(m) 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 and quantity and quality of water

in surface water 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 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 the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

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

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

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

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

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

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

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

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

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

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

(q) a coal conservation plan;

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

(2) The application for a permit must be accompanied by maps meeting the requirements of subsections (2)(a) through (2)(n). The maps must:

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

(b) show any adjacent deep mining or surface mining, 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 the 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 must 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 that have been submitted;

(l) show a listing of plant species encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree species and the approximate number of each species occurring per acre on the area to be affected, and the locations generally of the various species of plants;

(m) be certified by a professional engineer or professional land surveyor licensed as provided by Title 37, chapter 67; and

(n) contain 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-mining 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 must, 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 funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must 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, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must 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-mining 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 must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall 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) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on January 1, 2004, in order to incorporate the provisions of this part.

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

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

(9) If requested by landowners adjacent to or within the permit boundary, a permittee shall participate in mediation with the landowners in the event of a disagreement over what constitutes significant long-term or permanent degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area, subject to this part. (Bracketed language in subsection (1)(g)(iii) terminates on occurrence of contingency--sec. 4, Ch. 484, L. 2019.)"

NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6. Contingent voidness.** (1) If the United States secretary of the interior disapproves any provision of [this act] pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) The department of environmental quality shall notify the code commissioner of a disapproval