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

**13                   Section 1.** Section 82-4-206, MCA, is amended to read:

14       **"82-4-206. Procedure for contested case hearings.** (1) An applicant, permittee, or person with an  
15      interest that is or may be adversely affected and who submitted comments or written objections during the  
16      relevant comment period for an application pursuant to subsections (1)(a) through (1)(e), may request a hearing  
17      before the board on any of the following decisions of the department by submitting a written request stating the  
18      reason for the request within 30 days after the department's decision:

19 (a) approval or denial of an application for a permit pursuant to 82-4-231;  
20 (b) approval or denial of an application for a prospecting permit pursuant to 82-4-226;  
21 (c) approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;  
22 (d) approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or  
23 (e) approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.

24 (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,  
25 part 6, apply to a hearing before the board under subsection (1)."

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

12           (2) The reclamation plan must set forth in detail the manner in which the applicant intends to  
13 comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air  
14 and water quality laws and rules and any applicable health and safety standards.

15           (3) The application for a permit or major revision of a permit, which must contain the reclamation  
16 plan, must be submitted to the department.

17           (4) The department shall determine whether the application is administratively complete. An  
18 application is administratively complete if it contains information addressing each application requirement in 82-  
19 4-222 and the rules implementing that section and all information necessary to initiate processing and public  
20 review. The department shall notify the applicant in writing of its determination no later than 90 days after  
21 submittal of the application. If the department determines that the application is not administratively complete, it  
22 shall specify in the notice those items that the application must address. The application is presumed  
23 administratively complete as to those requirements not specified in the notice.

24           (5) If the department determines that an environmental impact statement on the application is  
25 required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to  
26 subsection (4).

27           (6) After the applicant receives notice that the application is administratively complete, the

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1        applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of  
2        general circulation in the locality of the proposed operation. The department shall notify various local  
3        governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the  
4        locality in which the proposed mining will take place of the application and provide a reasonable time for them  
5        to submit written comments. Any person having an interest that is or may be adversely affected or the officer or  
6        head of any federal, state, or local governmental agency or authority may file written objections to the proposed  
7        initial or revised application for permit or major revision within 30 days of the applicant's published notice. If  
8        written objections are filed and an objector requests an informal conference, the department shall hold an  
9        informal conference in the locality of the proposed operation within 30 days of receipt of the request. The  
10      department shall notify the applicant and all parties to the informal conference of its decision and the reasons  
11      for its decision within 60 days of the informal conference. The department may arrange with the applicant upon  
12      request by any party to the administrative proceeding for access to the proposed mining area for the purpose of  
13      gathering information relevant to the proceeding.

14                (7)        The filing of written objections or a request for an informal conference may not preclude the  
15        department from proceeding with its review of the application as specified in subsection (8).

16                (8)        (a) The department shall review each administratively complete application and determine the  
17        acceptability of the application. During the review, the department may propose modifications to the application  
18        or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is  
19        considered acceptable when the application is in compliance with all of the applicable requirements of this part  
20        and the regulatory program pursuant to this part.

21                (b)        If the applicant significantly modifies the application after the application has been determined  
22        administratively complete in accordance with subsection (4), the department shall under this section either deny  
23        the application or conduct a new review, including an administrative completeness determination, public notice,  
24        and objection period.

25                (c)        If an environmental impact statement is determined to be necessary prior to making a permit  
26        decision, the department shall complete and publish the final environmental impact statement at least 15 days  
27        prior to the date of issuance of the written findings pursuant to subsection (8)(f).

21 (f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written  
22 findings granting or denying the permit or major revision application in whole or in part not later than 45-60 days  
23 from the date the application is determined acceptable. However, if lands subject to the federal lands program  
24 are included in the application for permit or major revision, the department shall prepare and submit written  
25 findings to the federal regulatory authority. If the department's decision is to grant the permit, the department  
26 shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date  
27 when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth

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1 in the written notification to the applicant.

2 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately  
3 notify the board in writing of its failure to comply and the reasons for the failure to comply.

4 (9) The applicant, the permittee, a landowner, or any person with an interest that is or may be  
5 adversely affected by the department's permit decision and who submitted a written objection pursuant to  
6 subsection (8) may within 30 days of that the department's decision submit a written notice requesting a  
7 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error  
8 and must be limited to the issues raised in written objections and issues in the department's decision not  
9 addressed by the department in its notice of determination published pursuant to subsection (8)(e). The hearing  
10 must be started within 30 days of the request. For purposes of a hearing, the board or its hearings officer may  
11 order site inspections of the area pertinent to the application. The board shall within 20 days of the hearing  
12 notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the  
13 findings and decisions. A person who presided at the informal conference may not preside at the hearing or  
14 participate in the decision.

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

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

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

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

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

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

10 (h) deposit as much stockpiled waste material as possible back into the mine voids upon  
11 abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be  
12 disposed of as provided by this part and the rules of the department.

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

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

21 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

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

23 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being  
24 released to watercourses;

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

27 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible

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1 using the best technology currently available, additional contributions of suspended solids to streamflow or  
2 runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable  
3 state or federal law;

4 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to  
5 commencement of strip- or underground-mining operations, with the structures to be certified by a qualified  
6 registered engineer and to be constructed as designed and as approved in the reclamation plan;

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

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

11 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water  
12 from mines;

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

15 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams  
16 to ensure long-term stability; and

17 (viii) any other actions that the department may prescribe;

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

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

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

24 (o) develop contingency plans to prevent sustained combustion;

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

27 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes

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1 of this part, taking into consideration the physical, climatological, and other characteristics of the site;

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

4 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in  
5 a manner that prevents a gravity discharge of water from the mine.

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

13

14 **NEW SECTION. Section 3. Saving clause.** [This act] does not affect rights and duties that matured,  
15 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

16

17 **NEW SECTION. Section 4. Severability.** If a portion of [this act] is invalid, all valid portions that are  
18 severable from the invalid part remain in effect. If a portion of [this act] is invalid in one or more of its  
19 applications, the portion remains in effect in all valid applications that are severable from the invalid  
20 applications.

21

22 **NEW SECTION. Section 5. Contingent voidness.** (1) If any provision of [this act] is disapproved by  
23 the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

24 (2) Within 15 days of the effective date of the disapproval under subsection (1), the department of  
25 environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1)  
26 has occurred.

27

1            **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

2            - END -

AMEND