

SURFACE COAL MINING AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill amends sections relating to surface coal mining.

Highlighted Provisions:

This bill:

- ▶ removes two repeal dates; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-10-11 (Subsection (5) is Repealed 09/30/09), as last amended by Laws of Utah 2004, Chapter 230

40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/09), as last amended by Laws of Utah 2004, Chapter 230

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **40-10-11 (Subsection (5) is Repealed 09/30/09)** is amended to read:

40-10-11 (Subsection (5) is Repealed 09/30/09). Division action on permit application -- Requirements for approval -- Schedule of applicant's mining law violation

30 **-- Restoration of prime farmland.**

31 (1) (a) (i) After a complete mining application and reclamation plan or a revision or
32 renewal of an application and plan is submitted to the division as required by this chapter and
33 the public is notified and given an opportunity for a hearing as required by Section 40-10-13,
34 the division shall grant, require modification of, or deny the permit application.

35 (ii) The division shall make its decision within a reasonable time set by the division
36 and notify the applicant in writing.

37 (b) The applicant for a permit, or a revision of a permit shall have the burden of
38 establishing that the application is in compliance with all requirements of this chapter.

39 (c) Within ten days after the granting of a permit, the division shall provide to the
40 local governmental officials in the local political subdivision in which the area of affected land
41 is located:

42 (i) notification that a permit has been issued; and

43 (ii) a description of the location of the land.

44 (2) No permit or revision application shall be approved unless the application
45 affirmatively demonstrates and the division finds in writing on the basis of the information set
46 forth in the application, or from information otherwise available which will be documented in
47 the approval and made available to the applicant, that:

48 (a) the permit application is accurate and complete and that all requirements of this
49 chapter have been complied with;

50 (b) the applicant has demonstrated that the reclamation requirements under this
51 chapter can be accomplished under the reclamation plan contained in the permit application;

52 (c) the assessment of the probable cumulative impact of all anticipated mining in the
53 area on the hydrologic balance specified in Subsection 40-10-10(2)(c) has been made by the
54 division and the proposed operation has been designed to prevent material damage to the
55 hydrologic balance outside the permit area;

56 (d) the area proposed to be mined is not included within an area:

57 (i) designated as unsuitable for surface coal mining pursuant to Section 40-10-24; or

58 (ii) under study for this designation in an administrative proceeding commenced under
59 Subsection 40-10-24(2), unless the operator demonstrates that prior to January 1, 1977,
60 substantial legal and financial commitments were made to the operation;

61 (e) the proposed surface coal mining operation would not:

62 (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are
63 irrigated or naturally subirrigated other than on:

64 (A) undeveloped range lands that are not significant to farming on alluvial valley
65 floors; or

66 (B) lands which the division finds are of such small acreage that if farming is
67 interrupted, discontinued, or precluded, the impact on the farm's agricultural production will
68 be negligible; or

69 (ii) materially damage the quantity or quality of water in surface or underground water
70 systems that supply alluvial valley floors specified in Subsection (2)(e)(i), but this Subsection
71 (2)(e) shall not affect those surface coal mining operations which in the year preceding August
72 3, 1977, produced coal in commercial quantities and were located within or adjacent to
73 alluvial valley floors or had obtained specific permit approval by the division to conduct
74 surface coal mining operations within these alluvial valley floors; and

75 (f) if the private mineral estate has been severed from the private surface estate, the
76 applicant has submitted to the division:

77 (i) the written consent of the surface owner to the extraction of coal by surface mining
78 methods provided that nothing in this Subsection (2) shall be construed to:

79 (A) increase or diminish any property right established under the laws of the state; or

80 (B) authorize the board or division to adjudicate property right disputes;

81 (ii) a conveyance that expressly grants or reserves the right to extract the coal by
82 surface mining methods; or

83 (iii) documentation consistent with state law that establishes the status of the
84 surface-subsurface legal relationship.

85 (3) (a) (i) The applicant shall file with the permit application a list of any notices of

86 violations of the Surface Mining Control and Reclamation Act of 1977 or its implementing
87 regulations, this chapter, any state or federal program or law approved under the Surface
88 Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., and any law, rule,
89 or regulation of the United States, State of Utah, or any department or agency in the United
90 States pertaining to air or water environmental protection incurred by the applicant in
91 connection with any surface coal mining operation during the three-year period prior to the
92 date of application.

93 (ii) The list required in Subsection (3)(a)(i) shall also indicate the final resolution of
94 any notice of violation.

95 (b) If the list or other information available to the division indicates that any surface
96 coal mining operation owned or controlled by the applicant is currently in violation of this
97 chapter or other laws and regulations referred to in this Subsection (3), the permit shall not be
98 issued until the applicant submits proof that the violation has been corrected or is in the
99 process of being corrected to the satisfaction of the division, department, or agency which has
100 jurisdiction over the violation.

101 (c) No permit shall be issued to an applicant after a finding by the board, after
102 opportunity for hearing, that the applicant, or the operator specified in the application, controls
103 or has controlled mining operations with a demonstrated pattern of willful violations of this
104 chapter, the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et
105 seq., the implementing federal regulations, any state or federal programs enacted under the
106 Surface Mining Control and Reclamation Act, or other provisions of the approved Utah
107 program of such nature and duration with such resulting irreparable damage to the
108 environment as to indicate an intent not to comply with the provisions of this chapter.

109 (4) (a) (i) In addition to finding the application in compliance with Subsection (2), if
110 the area proposed to be mined contains prime farmland pursuant to division rules, the division
111 shall grant a permit to mine on prime farmland if the division finds in writing that the operator
112 has the technological capability to restore the mined area within a reasonable time to an
113 equivalent or higher level of yield as nonmined prime farmland in the surrounding area under

114 equivalent levels of management and can meet the soil reconstruction standards specified in
115 division rules.

116 (ii) Except for compliance with Subsection (2), the requirements of this subsection
117 shall apply to all permits issued after August 3, 1977.

118 (b) This Subsection (4) shall not apply to any permit issued prior to August 3, 1977, or
119 to any revisions or renewals of the permit, or to any existing surface mining operations for
120 which a permit was issued prior to August 3, 1977.

121 (5) (a) After October 24, 1992, the prohibition of Subsection (3) shall not apply to a
122 permit application if the violation resulted from an unanticipated event or condition that
123 occurred at a surface coal mining operation on lands eligible for remining under a permit held
124 by the person making the application.

125 (b) As used in this Subsection (5), the term "violation" has the same meaning as the
126 term has under Subsection (3).

127 [~~(c) This Subsection (5) is repealed September 30, 2009.~~]

128 Section 2. Section **40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/09)** is amended to read:

129 **40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/09). Performance standards for all coal**
130 **mining and reclamation operations -- Additional standards for steep-slope surface coal**
131 **mining -- Variances.**

132 (1) Any permit issued pursuant to this chapter to conduct surface coal mining shall
133 require that the surface coal mining operations will meet all applicable performance standards
134 of this chapter, and such other requirements as the division shall promulgate.

135 (2) General performance standards shall be applicable to all surface coal mining and
136 reclamation operations and shall require the operations as a minimum to:

137 (a) Conduct surface coal mining operations so as to maximize the utilization and
138 conservation of the solid fuel resource being recovered so that re-affecting the land in the future
139 through surface coal mining can be minimized.

140 (b) Restore the land affected to a condition capable of supporting the uses which it
141 was capable of supporting prior to any mining, or higher or better uses of which there is

142 reasonable likelihood, so long as the use or uses does not present any actual or probable hazard
143 to public health or safety or pose any actual or probable threat of water diminution or
144 pollution, and the permit applicant's declared proposed land use following reclamation is not
145 [~~deemed~~] considered to be impractical or unreasonable, inconsistent with applicable land use
146 policies and plans, involves unreasonable delay in implementation, or is violative of federal,
147 state, or local law.

148 (c) Except as provided in Subsection (3) with respect to all surface coal mining
149 operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic
150 materials) and grade in order to restore the approximate original contour of the land with
151 highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in
152 order to retain moisture to assist revegetation or as otherwise authorized pursuant to this
153 chapter); but in surface coal mining which is carried out at the same location over a substantial
154 period of time where the operation transects the coal deposit and the thickness of the coal
155 deposits relative to the volume of the overburden is large and where the operator demonstrates
156 that the overburden and other spoil and waste materials at a particular point in the permit area
157 or otherwise available from the entire permit area is insufficient, giving due consideration to
158 volumetric expansion, to restore the approximate original contour, the operator, at a minimum,
159 shall backfill, grade, and compact (where advisable) using all available overburden and other
160 spoil and waste materials to attain the lowest practicable grade but not more than the angle of
161 repose, to provide adequate drainage and to cover all acid-forming and other toxic materials,
162 in order to achieve an ecologically sound land use compatible with the surrounding region. In
163 surface coal mining where the volume of overburden is large relative to the thickness of the
164 coal deposit and where the operator demonstrates that due to volumetric expansion the amount
165 of overburden and other spoil and waste materials removed in the course of the mining
166 operation is more than sufficient to restore the approximate original contour, the operator
167 shall, after restoring the approximate contour, backfill, grade, and compact (where advisable)
168 the excess overburden and other spoil and waste materials to attain the lowest grade but more
169 than the angle of repose, and to cover all acid-forming and other toxic materials, in order to

170 achieve an ecologically sound land use compatible with the surrounding region and that the
171 overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and
172 water pollution and is revegetated in accordance with the requirements of this chapter.

173 (d) Stabilize and protect all surface areas, including spoil piles affected by the surface
174 coal mining and reclamation operation to effectively control erosion and attendant air and
175 water pollution.

176 (e) Remove the topsoil from the land in a separate layer, replace it on the backfill area,
177 or if not utilized immediately, segregate it in a separate pile from other spoil, and when the
178 topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of
179 the topsoil, maintain a successful cover by quick growing plant or other means thereafter so
180 that the topsoil is preserved from wind and water erosion, remains free of any contamination
181 by other acid or toxic material, and is in a usable condition for sustaining vegetation when
182 restored during reclamation; except if topsoil is of insufficient quantity or of poor quality for
183 sustaining vegetation, or if other strata can be shown to be more suitable for vegetation
184 requirements, then the operator shall remove, segregate, and preserve in a like manner the
185 other strata which is best able to support vegetation.

186 (f) Restore the topsoil or the best available subsoil which is best able to support
187 vegetation.

188 (g) For all prime farmlands, as identified in the rules, to be mined and reclaimed,
189 specifications for soil removal, storage, replacement, and reconstruction, the operator shall, as
190 a minimum, be required to:

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

195 (ii) segregate the B horizon of the natural soil, or underlying C horizons or other strata,
196 or a combination of these horizons or other strata that are shown to be both texturally and
197 chemically suitable for plant growth and that can be shown to be equally or more favorable for

198 plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a
199 root zone of comparable depth and quality to that which existed in the natural soil, and if not
200 utilized immediately, stockpile this material separately from other spoil, and provide needed
201 protection from wind and water erosion or contamination by other acid or toxic material;

202 (iii) replace and regrade the root zone material described in Subsection (2)(g)(ii) above
203 with proper compaction and uniform depth over the regraded spoil material; and

204 (iv) redistribute and grade in a uniform manner the surface soil horizon described in
205 Subsection (2)(g)(i).

206 (h) Create, if authorized in the approved mining and reclamation plan and permit,
207 permanent impoundments of water on mining sites as part of reclamation activities only when
208 it is adequately demonstrated that:

209 (i) the size of the impoundment is adequate for its intended purposes;

210 (ii) the impoundment dam construction will be so designed as to achieve necessary
211 stability with an adequate margin of safety compatible with that of structures constructed
212 under Public Law 83-566 (16 U.S.C. 1006);

213 (iii) the quality of impounded water will be suitable on a permanent basis for its
214 intended use and that discharges from the impoundment will not degrade the water quality
215 below water quality standards established pursuant to applicable federal and state law in the
216 receiving stream;

217 (iv) the level of water will be reasonably stable;

218 (v) final grading will provide adequate safety and access for proposed water users; and

219 (vi) these water impoundments will not result in the diminution of the quality or
220 quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial,
221 recreational, or domestic uses.

222 (i) Conducting any augering operation associated with surface mining in a manner to
223 maximize recoverability of mineral reserves remaining after the operation and reclamation are
224 complete and seal all auger holes with an impervious and noncombustible material in order to
225 prevent drainage except where the division determines that the resulting impoundment of

226 water in the auger holes may create a hazard to the environment or the public health or safety;
227 but the permitting authority may prohibit augering if necessary to maximize the utilization,
228 recoverability, or conservation of the solid fuel resources or to protect against adverse water
229 quality impacts.

230 (j) Minimize the disturbances to the prevailing hydrologic balance at the mine site and
231 in associated offsite areas and to the quality and quantity of water in surface and groundwater
232 systems both during and after surface coal mining operations and during reclamation by:

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

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

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

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

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

243 (B) constructing any siltation structures pursuant to this Subsection (2)(j)(ii) prior to
244 commencement of surface coal mining operations, such structures to be certified by a qualified
245 registered engineer to be constructed as designed and as approved in the reclamation plan;

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

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

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

253 (vi) preserving throughout the mining and reclamation process the essential hydrologic

254 functions of alluvial valley floors in the arid and semiarid areas of the state; and

255 (vii) such other actions as the division may prescribe.

256 (k) With respect to surface disposal of mine wastes, tailings, coal processing wastes,
257 and other waste in areas other than the mine working or excavations, stabilize all waste piles in
258 designated areas through construction in compacted layers, including the use of incombustible
259 and impervious materials, if necessary, and assure the final contour of the waste pile will be
260 compatible with natural surroundings and that the site can and will be stabilized and
261 revegetated according to the provisions of this chapter.

262 (l) Refrain from surface coal mining within 500 feet from active and abandoned
263 underground mines in order to prevent breakthroughs and to protect health or safety of miners;
264 but the division shall permit an operator to mine near, through, or partially through an
265 abandoned underground mine or closer to an active underground mine if:

266 (i) the nature, timing, and sequencing of the approximate coincidence of specific
267 surface mine activities with specific underground mine activities are jointly approved by the
268 departments, divisions, and agencies concerned with surface mine reclamation and the health
269 and safety of underground miners; and

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

272 (m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or
273 abandon, in accordance with the standards and criteria developed pursuant to the division's
274 rules, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal
275 processing wastes, or other liquid and solid wastes, and used either temporarily or permanently
276 as dams or embankments.

277 (n) Insure that all debris, acid-forming materials, toxic materials, or materials
278 constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a
279 manner designed to prevent contamination of ground or surface waters and that contingency
280 plans are developed to prevent sustained combustion.

281 (o) Insure that explosives are used only in accordance with existing state and federal

282 law and the rules adopted by the board, which shall include provisions to:

283 (i) provide adequate advance written notice to local governments and residents who
284 might be affected by the use of the explosives by publication of the planned blasting schedule
285 in a newspaper of general circulation in the locality and by mailing a copy of the proposed
286 blasting schedule to every resident living within 1/2 mile of the proposed blasting site and by
287 providing daily notice to resident/occupiers in these areas prior to any blasting;

288 (ii) maintain for a period of at least three years and make available for public
289 inspection upon request a log detailing the location of the blasts, the pattern and depth of the
290 drill holes, the amount of explosives used per hole, and the order and length of delay in the
291 blasts;

292 (iii) limit the type of explosives and detonating equipment, the size, the timing and
293 frequency of blasts based upon the physical conditions of the site so as to prevent injury to
294 persons, damage to public and private property outside the permit area, adverse impacts on
295 any underground mine, and change in the course, channel, or availability of ground or surface
296 water outside the permit area;

297 (iv) require that all blasting operations be conducted by trained and competent
298 persons, and to implement this requirement, the division shall promulgate rules requiring the
299 training, examination, and certification of persons engaging in or directly responsible for
300 blasting or the use of explosives in surface and coal mining operations; and

301 (v) provide that upon the request of a resident or owner of a man-made dwelling or
302 structure within 1/2 mile of any portion of the permitted area, the applicant or permittee shall
303 conduct a preblasting survey of the structures and submit the survey to the division and a copy
304 to the resident or owner making the request, the area of which survey shall be decided by the
305 division and shall include such provisions as promulgated.

306 (p) Insure that all reclamation efforts proceed in an environmentally sound manner and
307 as contemporaneously as practicable with the surface coal mining operations; but where the
308 applicant proposes to combine surface mining operations with underground mining operations
309 to assure maximum practical recovery of the mineral resources, the division may grant a

310 variance for specific areas within the reclamation plan from the requirement that reclamation
311 efforts proceed as contemporaneously as practicable to permit underground operations prior to
312 reclamation:

313 (i) if the division finds in writing that:

314 (A) the applicant has presented, as part of the permit application, specific, feasible
315 plans for the proposed underground mining operations;

316 (B) the proposed underground mining operations are necessary or desirable to assure
317 maximum practical recovery of the mineral resource and will avoid multiple disturbance of the
318 surface;

319 (C) the applicant has satisfactorily demonstrated that the plan for the underground
320 mining operations conforms to requirements for underground mining in the jurisdiction and
321 that permits necessary for the underground mining operations have been issued by the
322 appropriate authority;

323 (D) the areas proposed for the variance have been shown by the applicant to be
324 necessary for the implementing of the proposed underground mining operations;

325 (E) no substantial adverse environmental damage, either onsite or offsite, will result
326 from the delay in completion of reclamation as required by this chapter; and

327 (F) provisions for the offsite storage of spoil will comply with Subsection (2)(v);

328 (ii) if the board has adopted specific rules to govern the granting of the variances in
329 accordance with the provisions of this Subsection (2)(p) and has imposed such additional
330 requirements as considered necessary;

331 (iii) if variances granted under this Subsection (2)(p) are to be reviewed by the
332 division not more than three years from the date of issuance of the permit; and

333 (iv) if liability under the bond filed by the applicant with the division pursuant to
334 Section 40-10-15 shall be for the duration of the underground mining operations and until the
335 requirements of this Subsection (2) and Section 40-10-16 have been fully complied with.

336 (q) Insure that the construction, maintenance, and postmining conditions of access
337 roads into and across the site of operations will control or prevent erosion and siltation,

338 pollution of water, damage to fish or wildlife or their habitat, or public or private property.

339 (r) Refrain from the construction of roads or other access ways up a stream bed or
340 drainage channel or in such proximity to the channel so as to seriously alter the normal flow of
341 water.

342 (s) Establish on the regraded areas and all other lands affected, a diverse, effective,
343 and permanent vegetative cover of the same seasonal variety native to the area of land to be
344 affected and capable of self-regeneration and plant succession at least equal in extent of cover
345 to the natural vegetation of the area; except that introduced species may be used in the
346 revegetation process where desirable and necessary to achieve the approved postmining land
347 use plan.

348 (t) (i) Assume the responsibility for successful revegetation, as required by Subsection
349 (2)(s), for a period of five full years after the last year of augmented seeding, fertilizing,
350 irrigation, or other work in order to assure compliance with Subsection (2)(s), except in those
351 areas or regions of the state where the annual average precipitation is 26 inches or less, then
352 the operator's assumption of responsibility and liability will extend for a period of ten full
353 years after the last year of augmented seeding, fertilizing, irrigation, or other work; but when
354 the division approves a long-term intensive agricultural postmining land use, the applicable
355 five or ten-year period of responsibility for revegetation shall commence at the date of initial
356 planting for this long-term intensive, agricultural postmining land use, except when the
357 division issues a written finding approving a long-term, intensive, agricultural postmining land
358 use, as part of the mining and reclamation plan, the division may grant exception to the
359 provisions of Subsection (2)(s); and

360 (ii) on lands eligible for re-mining, assume the responsibility for successful
361 revegetation for a period of two full years after the last year of augmented seeding, fertilizing,
362 irrigation, or other work in order to assure compliance with the applicable standards, except in
363 areas of the state where the average annual precipitation is 26 inches or less, assume the
364 responsibility for successful revegetation for a period of five full years after the last year of
365 augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the

366 applicable standards.

367 (u) Protect offsite areas from slides or damage occurring during the surface coal
368 mining and reclamation operations and not deposit spoil material or locate any part of the
369 operations or waste accumulations outside the permit area.

370 (v) Place all excess spoil material resulting from coal surface mining and reclamation
371 activities in a manner that:

372 (i) spoil is transported and placed in a controlled manner in position for concurrent
373 compaction and in a way to assure mass stability and to prevent mass movement;

374 (ii) the areas of disposal are within the bonded permit areas and all organic matter
375 shall be removed immediately prior to spoil placement;

376 (iii) appropriate surface and internal drainage systems and diversion ditches are used
377 so as to prevent spoil erosion and movement;

378 (iv) the disposal area does not contain springs, natural water courses, or wet weather
379 seeps unless lateral drains are constructed from the wet areas to the main underdrains in a
380 manner that filtration of the water into the spoil pile will be prevented;

381 (v) if placed on a slope, the spoil is placed upon the most moderate slope among those
382 upon which, in the judgment of the division, the spoil could be placed in compliance with all
383 the requirements of this chapter and shall be placed, where possible, upon or above a natural
384 terrace, bench, or berm, if this placement provides additional stability and prevents mass
385 movement;

386 (vi) where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient
387 size to prevent mass movement, is constructed;

388 (vii) the final configuration is compatible with the natural drainage pattern and
389 surroundings and suitable for intended uses;

390 (viii) design of the spoil disposal area is certified by a qualified professional engineer,
391 and to implement this requirement, the division shall promulgate rules regarding the
392 certification of engineers in the area of spoil disposal design; and

393 (ix) all other provisions of this chapter are met.

394 (w) Meet such other criteria as are necessary to achieve reclamation in accordance
395 with the purposes of this chapter, taking into consideration the physical, climatological, and
396 other characteristics of the site.

397 (x) To the extent possible, using the best technology currently available, minimize
398 disturbances and adverse impacts of the operation on fish, wildlife, and related environmental
399 values, and achieve enhancement of these resources where practicable.

400 (y) Provide for an undisturbed natural barrier beginning at the elevation of the lowest
401 coal seam to be mined and extending from the outslope for the distance as the division shall
402 determine shall be retained in place as a barrier to slides and erosion.

403 (3) (a) Where an applicant meets the requirements of Subsections (3)(b) and (c), a
404 permit without regard to the requirement to restore to approximate original contour provided
405 in Subsections (2)(c), (4)(b), and (4)(c) may be granted for the surface mining of coal where
406 the mining operation will remove an entire coal seam or seams running through the upper
407 fraction of a mountain, ridge, or hill (except as provided in this Subsection (3)) by removing
408 all of the overburden and creating a level plateau or a gently rolling contour with no highwalls
409 remaining, and capable of supporting postmining uses in accord with the requirements of this
410 Subsection (3).

411 (b) In cases where an industrial, commercial, agricultural, residential, or public facility
412 (including recreational facilities) use is proposed for the postmining use of the affected land,
413 the division may grant a permit for a surface mining operation of the nature described in
414 Subsection (3)(a) pursuant to procedures and criteria set forth in the rules, including:

415 (i) the applicant's presentation of specific plans for the proposed postmining land use
416 which meet criteria concerning the type of use proposed;

417 (ii) the applicant's demonstration that the proposed use would be consistent with
418 adjacent land uses and existing state and local land use plans and programs and with other
419 requirements of this chapter; and

420 (iii) procedures whereby the division provides the governing body of the unit of
421 general-purpose government in which the land is located and any state or federal agency which

422 the division, in its discretion, determines to have an interest in the proposed use, an
423 opportunity of not more than 60 days to review and comment on the proposed use.

424 (c) All permits granted under the provisions of this Subsection (3) shall be reviewed
425 not more than three years from the date of issuance of the permit, unless the applicant
426 affirmatively demonstrates that the proposed development is proceeding in accordance with
427 the terms of the approved schedule and reclamation plan.

428 (4) The following performance standards shall be applicable to steep-slope surface
429 coal mining and shall be in addition to those general performance standards required by this
430 section; but the provisions of this Subsection (4) shall not apply to those situations in which an
431 operator is mining on flat or gently rolling terrain, on which an occasional steep slope is
432 encountered through which the mining operation is to proceed, leaving a plain or
433 predominantly flat area or where an operator is in compliance with provisions of Subsection
434 (3):

435 (a) Insure that when performing surface coal mining on steep slopes, no debris,
436 abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the
437 downslope below the bench or mining cut; but spoil material in excess of that required for the
438 reconstruction of the approximate original contour under the provisions of Subsection (2)(c) or
439 this Subsection (4) shall be permanently stored pursuant to Subsection 40-10-17(2)(v).

440 (b) Complete backfilling with spoil material shall be required to cover completely the
441 highwall and return the site to the appropriate original contour, which material will maintain
442 stability following mining and reclamation.

443 (c) The operator may not disturb land above the top of the highwall unless the division
444 finds that the disturbance will facilitate compliance with the environmental protection
445 standards of this section; but the land disturbed above the highwall shall be limited to that
446 amount necessary to facilitate this compliance.

447 (d) For the purposes of this Subsection (4), "steep slope" means any slope above 20
448 degrees or such lesser slope as may be defined by the division after consideration of soil,
449 climate, and other characteristics of an area.

450 (5) The board shall promulgate specific rules to govern the granting of variances from
451 the requirement to restore to approximate original contour provided in Subsection (4)(b)
452 pursuant to procedures and criteria set forth in those rules including:

- 453 (a) written request by the surface owner concerning the proposed use;
 - 454 (b) approval of the proposed use as an equal or better economic or public use; and
 - 455 (c) approval of the proposed use as improving the watershed control in the area and as
- 456 using only such amount of spoil as is necessary to achieve the planned postmining land use.

457 ~~[(6) Subsection (2)(t)(ii) is repealed September 30, 2009.]~~