

**40-10-24 Determination of unsuitability of lands for surface coal mining -- Petition -- Public hearing -- Detailed statement by division.**

- (1)
- (a) The board and division, with the advice of appropriate federal, state, and local agencies, shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in Subsections (1)(b) and (1)(c). This designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.
  - (b) Upon petition pursuant to Subsection (2), the board shall designate an area as unsuitable for all or certain types of surface coal mining operations if the board and division determine that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.
  - (c) Upon petition pursuant to Subsection (2), a surface area may be designated unsuitable for certain types of surface coal mining operations if these operations will:
    - (i)
      - (A) be incompatible with existing state or local land use plans or programs;
      - (B) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;
      - (C) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and the lands to include aquifers and aquifer recharge areas; or
      - (D) affect natural hazard lands in which the operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology; and
    - (ii) where the criteria listed in Subsection (1)(c)(i) have been balanced against the economic impact of the designation in a cost-benefit analysis.
  - (d) Determinations of the unsuitability of lands for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the state and local levels.
  - (e) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted:
    - (i) on August 3, 1977;
    - (ii) under a permit issued pursuant to this chapter; or
    - (iii) where substantial legal and financial commitments in these operations were in existence prior to January 1, 1977.
- (2)
- (a) Any person having an interest which is or may be adversely affected shall have the right to petition the board to have an area designated as unsuitable for surface coal mining operations or to have this designation terminated.
  - (b) The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition the board shall hold a public hearing, after appropriate notice and publication of the date, time, and location of the hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after the hearing, the board shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the

reasons for it. If all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

- (3) Prior to any land areas being designated as unsuitable for surface coal mining operations, a detailed statement shall be prepared by the division on:
  - (a) the potential coal resources of the area;
  - (b) the demand for coal resources; and
  - (c) the impact of the designation on the environment, the economy, and the supply of coal.
- (4) After August 3, 1977, and subject to valid existing rights, no surface coal mining operations, except those which exist on that date, shall be permitted:
  - (a) on any lands where this activity is precluded by Public Law 95-87;
  - (b) on any lands which will adversely affect any publicly owned park or places included in the National Register of Historic Sites, unless approved jointly by the division and the federal, state, or local agency with jurisdiction over the park or the historic site;
  - (c) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join this right-of-way line and except that the division may permit these roads to be relocated or the area affected to lie within 100 feet of the road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or
  - (d) within 300 feet from any occupied dwelling, unless waived by the owner of same, nor within 300 feet from any public building, school, church, community, institutional building, or public park, or within 100 feet of a cemetery.

Amended by Chapter 219, 1994 General Session