

40-10-3 Definitions.

For the purposes of this chapter:

- (1) "Adjudicative proceeding" means:
 - (a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or
 - (b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).
- (2) "Alluvial valley floors" mean the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.
- (3) "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 and spoil piles eliminated; but water impoundments may be permitted where the division determines that they are in compliance with Subsection 40-10-17(2)(h).
- (4) "Board" means the Board of Oil, Gas, and Mining and the board shall not be defined as an employee of the division.
- (5) "Division" means the Division of Oil, Gas, and Mining.
- (6) "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 chapter in a surface coal mining and reclamation operation, which condition, practice, or violation 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 expose himself or herself to the danger during the time necessary for abatement.
- (7) "Employee" means those individuals in the employ of the division and excludes the board.
- (8) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under Section 40-10-25 or 40-10-25.1.
- (9) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.
- (10) "Other minerals" mean clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid or solution form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.
- (11) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the division.
- (12) "Permit applicant" or "applicant" means a person applying for a permit.
- (13) "Permitting agency" means the division.
- (14) "Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by Section 40-10-15 and shall be readily identifiable by appropriate markers on the site.

- (15) "Permittee" means a person holding a permit.
- (16) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.
- (17) "Prime farmland" means the same as prescribed by the United States Department of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics.
- (18) "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to Section 40-10-10.
- (19) "Surface coal mining and reclamation operations" mean surface mining operations and all activities necessary and incident to the reclamation of these operations after the effective date of this chapter.
- (20) "Surface coal mining operations" mean:
 - (a) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 40-10-18, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. These activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; but these activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3% of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to Section 40-10-8.
 - (b) The areas upon which the activities occur or where the activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities.
- (21) "Unanticipated event or condition" means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.
- (22) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

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