

**SUNSET DATE EXTENSION OF DIVISION  
OF OIL, GAS AND MINING**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Mike Dmitrich**

---

---

**LONG TITLE**

**General Description:**

This bill extends the Division of Oil, Gas and Mining remining incentives provision for an additional five years.

**Highlighted Provisions:**

This bill:

▶ extends the Division of Oil, Gas and Mining remining incentives provision for an additional five-year period.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**40-10-11 (Subsection (5) is Repealed 09/30/04)**, as last amended by Chapter 197, Laws of Utah 1998

**40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/04)**, as last amended by Chapter 99, Laws of Utah 1997

**Uncodified Material Affected:**

AMENDS UNCODIFIED MATERIAL:

**Uncodified Section 26, Chapter 219, Laws of Utah 1994**



28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58

---

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

Section 1. Section **40-10-11 (Subsection (5) is Repealed 09/30/04)** is amended to read:

**40-10-11 (Subsection (5) is Repealed 09/30/04). Division action on permit application -- Requirements for approval -- Schedule of applicant's mining law violation -- Restoration of prime farmland.**

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

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

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

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

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

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

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

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

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

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

59 hydrologic balance outside the permit area;

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

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

62 (ii) under study for this designation in an administrative proceeding commenced under

63 Subsection 40-10-24(2), unless the operator demonstrates that prior to January 1, 1977,

64 substantial legal and financial commitments were made to the operation;

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

66 (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated

67 or naturally subirrigated other than on:

68 (A) undeveloped range lands that are not significant to farming on alluvial valley

69 floors; or

70 (B) lands which the division finds are of such small acreage that if farming is

71 interrupted, discontinued, or precluded, the impact on the farm's agricultural production will be

72 negligible; or

73 (ii) materially damage the quantity or quality of water in surface or underground water

74 systems that supply alluvial valley floors specified in Subsection (2)(e)(i), but this Subsection

75 (2)(e) shall not affect those surface coal mining operations which in the year preceding August

76 3, 1977, produced coal in commercial quantities and were located within or adjacent to alluvial

77 valley floors or had obtained specific permit approval by the division to conduct surface coal

78 mining operations within these alluvial valley floors; and

79 (f) if the private mineral estate has been severed from the private surface estate, the

80 applicant has submitted to the division:

81 (i) the written consent of the surface owner to the extraction of coal by surface mining

82 methods provided that nothing in this Subsection (2) shall be construed to:

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

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

85 (ii) a conveyance that expressly grants or reserves the right to extract the coal by

86 surface mining methods; or

87 (iii) documentation consistent with state law that establishes the status of the

88 surface-subsurface legal relationship.

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

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

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

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

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

113 (4) (a) (i) In addition to finding the application in compliance with Subsection (2), if  
114 the area proposed to be mined contains prime farmland pursuant to division rules, the division  
115 shall grant a permit to mine on prime farmland if the division finds in writing that the operator  
116 has the technological capability to restore the mined area within a reasonable time to an  
117 equivalent or higher level of yield as nonmined prime farmland in the surrounding area under  
118 equivalent levels of management and can meet the soil reconstruction standards specified in  
119 division rules.

120 (ii) Except for compliance with Subsection (2), the requirements of this subsection

121 shall apply to all permits issued after August 3, 1977.

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

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

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

131 (c) This Subsection (5) is repealed September 30, [~~2004~~] 2009.

132 Section 2. Section **40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/04)** is amended to read:

133 **40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/04). Performance standards for all coal**  
134 **mining and reclamation operations -- Additional standards for steep-slope surface coal**  
135 **mining -- Variances.**

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

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

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

144 (b) Restore the land affected to a condition capable of supporting the uses which it was  
145 capable of supporting prior to any mining, or higher or better uses of which there is reasonable  
146 likelihood, so long as the use or uses does not present any actual or probable hazard to public  
147 health or safety or pose any actual or probable threat of water diminution or pollution, and the  
148 permit applicant's declared proposed land use following reclamation is not deemed to be  
149 impractical or unreasonable, inconsistent with applicable land use policies and plans, involves  
150 unreasonable delay in implementation, or is violative of federal, state, or local law.

151 (c) Except as provided in Subsection (3) with respect to all surface coal mining

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

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

179 (e) Remove the topsoil from the land in a separate layer, replace it on the backfill area,  
180 or if not utilized immediately, segregate it in a separate pile from other spoil, and when the  
181 topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of  
182 the topsoil, maintain a successful cover by quick growing plant or other means thereafter so

183 that the topsoil is preserved from wind and water erosion, remains free of any contamination by  
184 other acid or toxic material, and is in a usable condition for sustaining vegetation when restored  
185 during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining  
186 vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then  
187 the operator shall remove, segregate, and preserve in a like manner the other strata which is  
188 best able to support vegetation.

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

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

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

198 (ii) segregate the B horizon of the natural soil, or underlying C horizons or other strata,  
199 or a combination of these horizons or other strata that are shown to be both texturally and  
200 chemically suitable for plant growth and that can be shown to be equally or more favorable for  
201 plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a  
202 root zone of comparable depth and quality to that which existed in the natural soil, and if not  
203 utilized immediately, stockpile this material separately from other spoil, and provide needed  
204 protection from wind and water erosion or contamination by other acid or toxic material;

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

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

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

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

213 (ii) the impoundment dam construction will be so designed as to achieve necessary

214 stability with an adequate margin of safety compatible with that of structures constructed under  
215 Public Law 83-566 (16 U.S.C. 1006);

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

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

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

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

225 (i) Conducting any augering operation associated with surface mining in a manner to  
226 maximize recoverability of mineral reserves remaining after the operation and reclamation are  
227 complete and seal all auger holes with an impervious and noncombustible material in order to  
228 prevent drainage except where the division determines that the resulting impoundment of water  
229 in the auger holes may create a hazard to the environment or the public health or safety; but the  
230 permitting authority may prohibit augering if necessary to maximize the utilization,  
231 recoverability, or conservation of the solid fuel resources or to protect against adverse water  
232 quality impacts.

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

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

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

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

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

242 (ii) (A) conducting surface coal mining operations so as to prevent, to the extent  
243 possible using the best technology currently available, additional contributions of suspended  
244 solids to streamflow or runoff outside the permit area, but in no event shall contributions be in



245 excess of requirements set by applicable state or federal law; and

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

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

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

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

255 (vi) preserving throughout the mining and reclamation process the essential hydrologic  
256 functions of alluvial valley floors in the arid and semiarid areas of the state; and

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

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

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

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

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

274 (m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or  
275 abandon, in accordance with the standards and criteria developed pursuant to the division's

276 rules, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal  
277 processing wastes, or other liquid and solid wastes, and used either temporarily or permanently  
278 as dams or embankments.

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

283 (o) Insure that explosives are used only in accordance with existing state and federal  
284 law and the rules adopted by the board, which shall include provisions to:

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

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

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

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

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

307 division and shall include such provisions as promulgated.

308 (p) Insure that all reclamation efforts proceed in an environmentally sound manner and  
309 as contemporaneously as practicable with the surface coal mining operations; but where the  
310 applicant proposes to combine surface mining operations with underground mining operations  
311 to assure maximum practical recovery of the mineral resources, the division may grant a  
312 variance for specific areas within the reclamation plan from the requirement that reclamation  
313 efforts proceed as contemporaneously as practicable to permit underground operations prior to  
314 reclamation:

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

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

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

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

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

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

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

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

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

335 (iv) if liability under the bond filed by the applicant with the division pursuant to  
336 Section 40-10-15 shall be for the duration of the underground mining operations and until the  
337 requirements of this Subsection [~~40-10-17~~](2) and Section 40-10-16 have been fully complied

338 with.

339 (q) Insure that the construction, maintenance, and postmining conditions of access  
340 roads into and across the site of operations will control or prevent erosion and siltation,  
341 pollution of water, damage to fish or wildlife or their habitat, or public or private property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

399 (x) To the extent possible, using the best technology currently available, minimize

400 disturbances and adverse impacts of the operation on fish, wildlife, and related environmental  
401 values, and achieve enhancement of these resources where practicable.

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

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

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

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

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

422 (iii) procedures whereby the division provides the governing body of the unit of  
423 general-purpose government in which the land is located and any state or federal agency which  
424 the division, in its discretion, determines to have an interest in the proposed use, an opportunity  
425 of not more than 60 days to review and comment on the proposed use.

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

430 (4) The following performance standards shall be applicable to steep-slope surface coal

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

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

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

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

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

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

454 (a) written request by the surface owner concerning the proposed use;

455 (b) approval of the proposed use as an equal or better economic or public use; and

456 (c) approval of the proposed use as improving the watershed control in the area and as  
457 using only such amount of spoil as is necessary to achieve the planned postmining land use.

458 (6) Subsection (2)(t)(ii) is repealed September 30, [~~2004~~] 2009.

459 Section 3. **Uncodified Section 26, Chapter 219, Laws of Utah 1994** is amended to  
460 read:

461 Section 26. **Repeal Date.**

462 Subsections 40-10-11(5) and 40-10-17(2)(t)(ii) are repealed September 30, [2004]  
463 2009.

---

---

**Legislative Review Note**  
**as of 12-31-03 7:28 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**



---

---

**Fiscal Note**  
**Bill Number SB0046**

**Sunset Date Extension of Division of Oil, Gas and Mining**

*26-Jan-04*

*12:10 PM*

---

---

**State Impact**

No fiscal impact.

---

**Individual and Business Impact**

No fiscal impact.

---

**Office of the Legislative Fiscal Analyst**