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SURFACE COAL MINING AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Michael E. Noel

LONG TITLE

Committee Note:

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

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40-10-11 (Subsection (5) is Repealed 09/30/09), as last amended by Laws of Utah 2004, Chapter 230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



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

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 Section **40-10-11 (Subsection (5) is Repealed 09/30/09)** is amended to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

31 **40-10-11 (Subsection (5) is Repealed 09/30/09). Division action on permit**
32 **application -- Requirements for approval -- Schedule of applicant's mining law violation**
33 **-- Restoration of prime farmland.**

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

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

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

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

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

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

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

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

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

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

59 (d) the area proposed to be mined is not included within an area:
60 (i) designated as unsuitable for surface coal mining pursuant to Section 40-10-24; or
61 (ii) under study for this designation in an administrative proceeding commenced under
62 Subsection 40-10-24(2), unless the operator demonstrates that prior to January 1, 1977,
63 substantial legal and financial commitments were made to the operation;
64 (e) the proposed surface coal mining operation would not:
65 (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated
66 or naturally subirrigated other than on:
67 (A) undeveloped range lands that are not significant to farming on alluvial valley
68 floors; or
69 (B) lands which the division finds are of such small acreage that if farming is
70 interrupted, discontinued, or precluded, the impact on the farm's agricultural production will be
71 negligible; or
72 (ii) materially damage the quantity or quality of water in surface or underground water
73 systems that supply alluvial valley floors specified in Subsection (2)(e)(i), but this Subsection
74 (2)(e) shall not affect those surface coal mining operations which in the year preceding August
75 3, 1977, produced coal in commercial quantities and were located within or adjacent to alluvial
76 valley floors or had obtained specific permit approval by the division to conduct surface coal
77 mining operations within these alluvial valley floors; and
78 (f) if the private mineral estate has been severed from the private surface estate, the
79 applicant has submitted to the division:
80 (i) the written consent of the surface owner to the extraction of coal by surface mining
81 methods provided that nothing in this Subsection (2) shall be construed to:
82 (A) increase or diminish any property right established under the laws of the state; or
83 (B) authorize the board or division to adjudicate property right disputes;
84 (ii) a conveyance that expressly grants or reserves the right to extract the coal by
85 surface mining methods; or
86 (iii) documentation consistent with state law that establishes the status of the
87 surface-subsurface legal relationship.
88 (3) (a) (i) The applicant shall file with the permit application a list of any notices of
89 violations of the Surface Mining Control and Reclamation Act of 1977 or its implementing

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

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

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

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

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

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

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

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

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

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

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

132 **40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/09). Performance standards for all coal**
133 **mining and reclamation operations -- Additional standards for steep-slope surface coal**
134 **mining -- Variances.**

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

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

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

143 (b) Restore the land affected to a condition capable of supporting the uses which it was
144 capable of supporting prior to any mining, or higher or better uses of which there is reasonable
145 likelihood, so long as the use or uses does not present any actual or probable hazard to public
146 health or safety or pose any actual or probable threat of water diminution or pollution, and the
147 permit applicant's declared proposed land use following reclamation is not [~~deemed~~]
148 considered to be impractical or unreasonable, inconsistent with applicable land use policies and
149 plans, involves unreasonable delay in implementation, or is violative of federal, state, or local
150 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 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 (2) and Section 40-10-16 have been fully complied with.

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

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

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

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

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

368 (u) Protect offsite areas from slides or damage occurring during the surface coal mining

369 and reclamation operations and not deposit spoil material or locate any part of the operations or
370 waste accumulations outside the permit area.

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

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

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

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

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

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

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

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

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

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

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

398 (x) To the extent possible, using the best technology currently available, minimize
399 disturbances and adverse impacts of the operation on fish, wildlife, and related environmental

400 values, and achieve enhancement of these resources where practicable.

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

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

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

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

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

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

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

429 (4) The following performance standards shall be applicable to steep-slope surface coal
430 mining and shall be in addition to those general performance standards required by this section;

431 but the provisions of this Subsection (4) shall not apply to those situations in which an operator
432 is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered
433 through which the mining operation is to proceed, leaving a plain or predominantly flat area or
434 where an operator is in compliance with provisions of Subsection (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.~~]

Legislative Review Note
as of 10-16-08 6:49 AM

Office of Legislative Research and General Counsel

S.B. 17 - Surface Coal Mining Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
