

1 **MINING OPERATIONS AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Walt Brooks**

5 Senate Sponsor: Don L. Ipson

6

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses mining.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies definitions under the Utah Mined Land Reclamation Act; and
- 13 ▶ makes technical corrections.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **17-41-101**, as last amended by Laws of Utah 2019, Chapter 227

21 **40-8-4**, as last amended by Laws of Utah 2011, Chapter 231

22

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

24 Section 1. Section **17-41-101** is amended to read:

25 **17-41-101. Definitions.**

26 As used in this chapter:

27 (1) "Advisory board" means:



28 (a) for an agriculture protection area, the agriculture protection area advisory board
29 created as provided in Section 17-41-201;

30 (b) for an industrial protection area, the industrial protection area advisory board
31 created as provided in Section 17-41-201; and

32 (c) for a critical infrastructure materials protection area, the critical infrastructure
33 materials protection area advisory board created as provided in Section 17-41-201.

34 (2) (a) "Agriculture production" means production for commercial purposes of crops,
35 livestock, and livestock products.

36 (b) "Agriculture production" includes the processing or retail marketing of any crops,
37 livestock, and livestock products when more than 50% of the processed or merchandised
38 products are produced by the farm operator.

39 (3) "Agriculture protection area" means a geographic area created under the authority
40 of this chapter that is granted the specific legal protections contained in this chapter.

41 (4) "Applicable legislative body" means:

42 (a) with respect to a proposed agriculture protection area, industrial protection area, or
43 critical infrastructure materials protection area:

44 (i) the legislative body of the county in which the land proposed to be included in the
45 relevant protection area is located, if the land is within the unincorporated part of the county; or

46 (ii) the legislative body of the city or town in which the land proposed to be included in
47 the relevant protection area is located; and

48 (b) with respect to an existing agriculture protection area, industrial protection area, or
49 critical infrastructure materials protection area:

50 (i) the legislative body of the county in which the relevant protection area is located, if
51 the relevant protection area is within the unincorporated part of the county; or

52 (ii) the legislative body of the city or town in which the relevant protection area is
53 located.

54 (5) "Board" means the Board of Oil, Gas, and Mining created in Section 40-6-4.

55 (6) "Critical infrastructure materials" means sand, gravel, or rock aggregate.

56 (7) "Critical infrastructure materials operations" means the extraction, excavation,
57 processing, or reprocessing of critical infrastructure materials.

58 (8) "Critical infrastructure materials operator" means a natural person, corporation,

59 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or
60 other organization or representative, either public or private, including a successor, assign,
61 affiliate, subsidiary, and related parent company, that:

62 (a) owns, controls, or manages a critical infrastructure materials operation; and

63 (b) has produced commercial quantities of critical infrastructure materials from the
64 critical infrastructure materials operations.

65 (9) "Critical infrastructure materials protection area" means a geographic area created
66 under the authority of this chapter on or after May 14, 2019, that is granted the specific legal
67 protections contained in this chapter.

68 (10) "Crops, livestock, and livestock products" includes:

69 (a) land devoted to the raising of useful plants and animals with a reasonable
70 expectation of profit, including:

71 (i) forages and sod crops;

72 (ii) grains and feed crops;

73 (iii) livestock as defined in Section [59-2-102](#);

74 (iv) trees and fruits; or

75 (v) vegetables, nursery, floral, and ornamental stock; or

76 (b) land devoted to and meeting the requirements and qualifications for payments or
77 other compensation under a crop-land retirement program with an agency of the state or federal
78 government.

79 (11) "Division" means the Division of Oil, Gas, and Mining created in Section
80 [40-6-15](#).

81 (12) "Industrial protection area" means a geographic area created under the authority of
82 this chapter that is granted the specific legal protections contained in this chapter.

83 (13) "Mine operator" means a natural person, corporation, association, partnership,
84 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
85 representative, either public or private, including a successor, assign, affiliate, subsidiary, and
86 related parent company, that, as of January 1, 2009:

87 (a) owns, controls, or manages a mining use under a large mine permit issued by the
88 division or the board; and

89 (b) has produced commercial quantities of a mineral deposit from the mining use.

90 (14) "Mineral deposit" [~~has the same meaning as~~] means the same as that term is
91 defined in Section 40-8-4, but excludes:

- 92 (a) building stone, decorative rock, and landscaping rock; and
- 93 (b) consolidated rock that:
 - 94 (i) is not associated with another deposit of minerals;
 - 95 (ii) is or may be extracted from land; and
 - 96 (iii) is put to uses similar to the uses of sand, gravel, and other aggregates.

97 (15) "Mining protection area" means land where a vested mining use occurs, including
98 each surface or subsurface land or mineral estate that a mine operator with a vested mining use
99 owns or controls.

100 (16) "Mining use":

101 (a) means:

102 (i) the full range of activities, from prospecting and exploration to reclamation and
103 closure, associated with the exploitation of a mineral deposit; and

104 (ii) the use of the surface and subsurface and groundwater and surface water of an area
105 in connection with the activities described in Subsection (16)(a)(i) that have been, are being, or
106 will be conducted; and

107 (b) includes, whether conducted on-site or off-site:

108 (i) any sampling, staking, surveying, exploration, or development activity;

109 (ii) any drilling, blasting, excavating, or tunneling;

110 (iii) the removal, transport, treatment, deposition, and reclamation of overburden,
111 development rock, tailings, and other waste material;

112 (iv) any removal, transportation, extraction, beneficiation, or processing of ore;

113 (v) any smelting, refining, autoclaving, or other primary or secondary processing
114 operation;

115 (vi) the recovery of any mineral left in residue from a previous extraction or processing
116 operation;

117 (vii) a mining activity that is identified in a work plan or permitting document;

118 (viii) the use, operation, maintenance, repair, replacement, or alteration of a building,

119 structure, facility, equipment, machine, tool, or other material or property that results from or is

120 used in a surface or subsurface mining operation or activity;

121 (ix) any accessory, incidental, or ancillary activity or use, both active and passive,
122 including a utility, private way or road, pipeline, land excavation, working, embankment, pond,
123 gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve, passive use
124 area, buffer zone, and power production facility;

125 (x) the construction of a storage, factory, processing, or maintenance facility; and

126 (xi) any activity described in Subsection 40-8-4 [(14)] (16)(a).

127 (17) (a) "Municipal" means of or relating to a city or town.

128 (b) "Municipality" means a city or town.

129 (18) "New land" means surface or subsurface land or mineral estate that a mine
130 operator gains ownership or control of, whether that land or mineral estate is included in the
131 mine operator's large mine permit.

132 (19) "Off-site" [~~has the same meaning as provided in~~] means the same as that term is
133 defined in Section 40-8-4.

134 (20) "On-site" [~~has the same meaning as provided in~~] means the same as that term is
135 defined in Section 40-8-4.

136 (21) "Planning commission" means:

137 (a) a countywide planning commission if the land proposed to be included in the
138 agriculture protection area, industrial protection area, or critical infrastructure materials
139 protection area is within the unincorporated part of the county and not within a planning
140 advisory area;

141 (b) a planning advisory area planning commission if the land proposed to be included
142 in the agriculture protection area, industrial protection area, or critical infrastructure materials
143 protection area is within a planning advisory area; or

144 (c) a planning commission of a city or town if the land proposed to be included in the
145 agriculture protection area, industrial protection area, or critical infrastructure materials
146 protection area is within a city or town.

147 (22) "Political subdivision" means a county, city, town, school district, local district, or
148 special service district.

149 (23) "Proposal sponsors" means the owners of land in agricultural production,
150 industrial use, or critical infrastructure materials operations who are sponsoring the proposal
151 for creating an agriculture protection area, industrial protection area, or critical infrastructure

152 materials protection area.

153 (24) "State agency" means each department, commission, board, council, agency,
154 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
155 unit, bureau, panel, or other administrative unit of the state.

156 (25) "Unincorporated" means not within a city or town.

157 (26) "Vested mining use" means a mining use:

158 (a) by a mine operator; and

159 (b) that existed or was conducted or otherwise engaged in before a political subdivision
160 prohibits, restricts, or otherwise limits a mining use.

161 Section 2. Section **40-8-4** is amended to read:

162 **40-8-4. Definitions.**

163 As used in this chapter:

164 (1) "Adjudicative proceeding" means:

165 (a) a division or board action or proceeding determining the legal rights, duties,
166 privileges, immunities, or other legal interests of one or more identifiable persons, including
167 actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right,
168 permit, or license; or

169 (b) judicial review of a division or board action or proceeding specified in Subsection
170 (1)(a).

171 (2) "Applicant" means a person who has filed a notice of intent to commence mining
172 operations, or who has applied to the board for a review of a notice or order.

173 (3) (a) "Approved notice of intention" means a formally filed notice of intention to
174 commence mining operations, including revisions to it, which has been approved under Section
175 **40-8-13**.

176 (b) An approved notice of intention is not required for small mining operations.

177 (4) (a) "Basalt" means fine grained, dark-colored igneous rock associated with a lava
178 flow or igneous intrusion composed primarily of plagioclase and pyroxene.

179 (b) Utah Geological Survey or the United States Geological Survey published maps
180 that classify material as "basalt" is prima facie evidence that the material meets the
181 requirements of Subsection (4)(a). An unmapped area can be classified by a Utah Geological
182 Survey Geologist or a licensed professional geologist in the state.

183 ~~[(4)]~~ (5) "Board" means the Board of Oil, Gas, and Mining.

184 ~~[(5)]~~ (6) "Conference" means an informal adjudicative proceeding conducted by the
185 division or board.

186 ~~[(6)]~~ (7) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in
187 the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface,
188 beneath the surface, or in the waters of the land from which any product useful to man may be
189 produced, extracted, or obtained or which is extracted by underground mining methods for
190 underground storage.

191 (b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, basalt, water,
192 geothermal steam, and oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil,
193 Gas, and Mining, but includes oil shale and bituminous sands extracted by mining operations.

194 ~~[(7)]~~ (8) "Development" means the work performed in relation to a deposit following
195 ~~[its]~~ the deposit's discovery but ~~[prior to]~~ before and in contemplation of production mining
196 operations, aimed at, but not limited to, preparing the site for mining operations, defining
197 further the ore deposit by drilling or other means, conducting pilot plant operations,
198 constructing roads or ancillary facilities, and other related activities.

199 ~~[(8)]~~ (9) "Division" means the Division of Oil, Gas, and Mining.

200 ~~[(9)]~~ (10) "Emergency order" means an order issued by the board in accordance with
201 ~~[the provisions of]~~ Title 63G, Chapter 4, Administrative Procedures Act.

202 ~~[(10)]~~ (11) (a) "Exploration" means surface-disturbing activities conducted for the
203 purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or
204 mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits
205 are most likely to exist.

206 (b) "Exploration" includes~~[, but is not limited to]~~:

207 (i) sinking shafts;

208 (ii) tunneling;

209 (iii) drilling holes and digging pits or cuts;

210 (iv) building of roads, and other access ways; and

211 (v) constructing and operating other facilities related to ~~[these]~~ the activities described
212 in this Subsection (11)(b).

213 (12) "Gravel" means a naturally occurring unconsolidated to moderately consolidated

214 accumulation of rock and mineral particles, the dominant size range being between 4
215 millimeters and 75 millimeters, that has been deposited by sedimentary processes.

216 ~~[(11)]~~ (13) "Hearing" means a formal adjudicative proceeding conducted by the board
217 under ~~[its]~~ the board's procedural rules.

218 ~~[(12)]~~ (14) (a) "Imminent danger to the health and safety of the public" means the
219 existence of a condition or practice, or a violation of a permit requirement or other requirement
220 of this chapter in a mining operation, which condition, practice, or violation could reasonably
221 be expected to cause substantial physical harm to persons outside the permit area before the
222 condition, practice, or violation can be abated.

223 (b) A reasonable expectation of death or serious injury before abatement exists if a
224 rational person, subjected to the same conditions or practices giving rise to the peril, would not
225 expose ~~[himself or herself]~~ the rational person to the danger during the time necessary for
226 abatement.

227 ~~[(13)]~~ (15) (a) "Land affected" means the surface and subsurface of an area within the
228 state where mining operations are being or will be conducted, including~~[, but not limited to]:~~

229 (i) on-site private ways, roads, and railroads;

230 (ii) land excavations;

231 (iii) exploration sites;

232 (iv) drill sites or workings;

233 (v) refuse banks or spoil piles;

234 (vi) evaporation or settling ponds;

235 (vii) stockpiles;

236 (viii) leaching dumps;

237 (ix) placer areas;

238 (x) tailings ponds or dumps; and

239 (xi) work, parking, storage, or waste discharge areas, structures, and facilities.

240 (b) ~~[All lands shall be]~~ Lands are excluded from ~~[the provisions of]~~ Subsection ~~[(13)]~~
241 (15)(a) that would:

242 (i) be includable as land affected, but which have been reclaimed in accordance with an
243 approved plan, as may be approved by the board; and

244 (ii) include lands in which mining operations have ceased ~~[prior to]~~ before July 1,

245 1977.

246 ~~[(14)]~~ (16) (a) "Mining operation" means activities conducted on the surface of the
 247 land for the exploration for, development of, or extraction of a mineral deposit, including~~[-but~~
 248 ~~not limited to,]~~ surface mining and the surface effects of underground and in situ mining,
 249 on-site transportation, concentrating, milling, evaporation, and other primary processing.

250 (b) "Mining operation" does not include:

251 (i) the extraction of sand, gravel, and rock aggregate;

252 (ii) the extraction of ~~Ĥ~~ ~~→~~ ~~[sand, gravel, and]~~ ~~←~~ ~~Ĥ~~ basalt ~~Ĥ~~ ~~→~~ for an area not to exceed 50

252a acres under

252aa active surface mining ~~←~~ ~~Ĥ~~ ;

253 ~~[(11)]~~ (iii) the extraction of oil and gas as defined in Title 40, Chapter 6, Board and
 254 Division of Oil, Gas, and Mining;

255 ~~[(12)]~~ (iv) the extraction of geothermal steam;

256 ~~[(13)]~~ (v) smelting or refining operations;

257 ~~[(14)]~~ (vi) off-site operations and transportation;

258 ~~[(15)]~~ (vii) reconnaissance activities; or

259 ~~[(16)]~~ (viii) activities ~~[which]~~ that will not cause significant surface resource
 260 disturbance or involve the use of mechanized earth-moving equipment, such as bulldozers or
 261 backhoes.

262 ~~[(15)]~~ (17) "Notice" means:

263 (a) notice of intention, as defined in this chapter; or

264 (b) written information given to an operator by the division describing compliance
 265 conditions at a mining operation.

266 ~~[(16)]~~ (18) "Notice of intention" means a notice to commence mining operations,
 267 including revisions to the notice.

268 ~~[(17)]~~ (19) "Off-site" means the land areas that are outside of or beyond the on-site
 269 land.

270 ~~[(18)]~~ (20) (a) "On-site" means the surface lands on or under which surface or
 271 underground mining operations are conducted.

272 (b) A series of related properties under the control of a single operator, but separated
 273 by small parcels of land controlled by others, ~~[will be]~~ are considered to be a single site unless
 274 an exception is made by the division.

275 ~~[(19)]~~ (21) "Operator" means a natural person, corporation, association, partnership,

276 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
277 representative, either public or private, owning, controlling, or managing a mining operation or
278 proposed mining operation.

279 ~~[(20)]~~ (22) "Order" means written information provided by the division or board to an
280 operator or other parties, describing the compliance status of a permit or mining operation.

281 ~~[(21)]~~ (23) "Owner" means a natural person, corporation, association, partnership,
282 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
283 representative, either public or private, owning, controlling, or managing a mineral deposit or
284 the surface of lands employed in mining operations.

285 ~~[(22)]~~ (24) "Permit area" means the area of land indicated on the approved map
286 submitted by the operator with the application or notice to conduct mining operations.

287 ~~[(23)]~~ (25) "Permit" means a permit or notice to conduct mining operations issued by
288 the division.

289 ~~[(24)]~~ (26) "Permittee" means a person holding, or who is required by Utah law to
290 hold, a valid permit or notice to conduct mining operations.

291 ~~[(25)]~~ (27) "Person" means an individual, partnership, association, society, joint stock
292 company, firm, company, corporation, or other governmental or business organization.

293 ~~[(26)]~~ (28) "Reclamation" means actions performed during or after mining operations
294 to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable,
295 ecological condition and use ~~[which will be]~~ that is consistent with local environmental
296 conditions.

297 (29) (a) "Rock aggregate" means those consolidated rock materials associated with a
298 sand deposit, a gravel deposit, or a sand and gravel deposit that were created by alluvial
299 sedimentary processes.

300 (b) "Rock aggregate" excludes any solid rock in the form of bedrock, other than basalt,
301 that is exposed at the surface of the earth or overlain by unconsolidated material.

302 (30) "Sand" means a naturally occurring unconsolidated to moderately consolidated
303 accumulation of rock and mineral particles, the dominant size range being between .004
304 millimeters to 4 millimeters, that has been deposited by sedimentary processes.

305 ~~[(27)]~~ (31) "Small mining operations" means mining operations that disturb or will
306 disturb 10 or less surface acres at any given time in an unincorporated area of a county or five

307 or less surface acres at any given time in an incorporated area of a county.

308 [~~28~~] (32) "Unwarranted failure to comply" means the failure of a permittee to prevent

309 the occurrence of a violation of the permit or a requirement of this chapter due to indifference,

310 lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or

311 this chapter due to indifference, lack of diligence, or lack of reasonable care.