

HOUSE BILL NO. 656

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VERMEIRE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COAL RECLAMATION LAWS; CREATING A PROCESS FOR MINOR REVISIONS; AMENDING SECTIONS 82-4-203, 82-4-221, AND 82-4-225, MCA; AND PROVIDING A CONTINGENT TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Minor revisions -- application -- exemptions. (1) During the term of a permit, the permittee may apply to the department to revise the permit and reclamation plan. Major revisions are subject to the provisions of 82-4-225.

(2) An application for a minor revision must:

(a) summarize proposed changes in sufficient detail for the department to determine that reclamation required under state and federal law will be accomplished;

(b) contain evidence that the changes in disturbed acres are insignificant in impact relative to the entire operation;

(c) identify previous environmental analyses relevant to the revision and demonstrate that the minor revision does not significantly change the human environment; ~~and~~

(d) document the adequacy of existing bonding; and

(e) include evidence that the permittee provided notice of the application for permit revision to the affected surface owner.

(3) Minor revisions are not subject to 82-4-231 and are exempt from the provisions of Title 75, chapter 1, parts 1 and 2.

(4) The department shall:

(a) notify the permittee if the minor revision application is adequate within 30 days of receipt; and

(b) approve the application within 60 days of the date the applicant is notified the application is adequate, provided the department determines the minor revision meets the requirements of this section and ensures adequate reclamation. Upon agreement of the permittee and the department, the period may be extended 30 days.

Section 2. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) "Affected drainage basin" means an area of land where surface water and ground water quality and quantity are affected by mining activities and where they drain to a common point.

(4) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(5) "Amendment" means a change in the mine or reclamation plan that increases the operation's permitted boundaries, ~~expansions of areas of land affected within existing permit boundaries, or expansions into adjacent permitted boundaries.~~ The term includes major revisions but does not include incidental boundary revisions or minor revisions.

1 ~~(5)~~(6) "Approximate original contour" means that surface configuration achieved by backfilling and
2 grading of the mined area so that the reclaimed area, including any terracing or access roads, closely
3 resembles the general surface configuration of the land prior to mining and blends into and complements the
4 drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so
5 that:

6 (a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to
7 the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain
8 these features after mining, recognizing that rolls and dips need not be restored to their original locations and
9 that level areas may be increased.

10 (b) the reclaimed area blends with and complements the drainage pattern of the surrounding area
11 so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an
12 unobstructed and controlled manner;

13 (c) postmining drainage basins may differ in size, location, configuration, orientation, and density
14 of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion
15 is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

16 (d) the reclaimed surface configuration is appropriate for the postmining land use.

17 ~~(6)~~(7) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that
18 contains or stores water and transmits it from one point to another in quantities that permit or have the potential
19 to permit economic development as a water source.

20 ~~(7)~~(8) (a) "Area of land affected" means the area of land from which overburden is to be or has been
21 removed and upon which the overburden is to be or has been deposited.

22 (b) The term includes:

23 (i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

24 (ii) lands affected by the construction of new railroad loops and roads or the improvement or use
25 of existing railroad loops and roads to gain access and to haul the mineral;

26 (iii) processing facilities at or near the mine site or other mine-associated facilities, waste
27 deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip
28 mining or underground mining; and

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1 (iv) all activities necessary and incident to the reclamation of the mining operations.

2 ~~(8)(9)~~ "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

3 ~~(9)(10)~~ "Board" means the board of environmental review provided for in 2-15-3502.

4 ~~(40)(11)~~ "Coal conservation plan" means the planned course of conduct of a strip- or underground-
5 mining operation and includes plans for the removal and use of minable and marketable coal located within the
6 area planned to be mined.

7 ~~(44)(12)~~ (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,
8 concentrating, or other processing or preparation.

9 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or
10 liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean
11 processing for other than commercial purposes.

12 ~~(42)(13)~~ "Coal preparation plant" means a commercial facility where coal is subject to coal preparation.
13 The term includes commercial facilities associated with coal preparation activities but is not limited to loading
14 buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal
15 processing and other waste disposal areas.

16 ~~(43)(14)~~ "Contour strip mining" means that strip-mining method commonly carried out in areas of rough
17 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are
18 made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the
19 excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

20 ~~(44)(15)~~ "Cropland" means land used for the production of adapted crops for harvest, alone or in
21 rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard
22 crops, and other similar crops.

23 ~~(45)(16)~~ "Degree" means a measurement from the horizontal. In each case, the measurement is
24 subject to a tolerance of 5% error.

25 ~~(46)(17)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

26 ~~(47)(18)~~ "Developed water resources" means land used for storing water for beneficial uses, such as
27 stockponds, irrigation, fire protection, flood control, and water supply.

28 ~~(48)(19)~~ "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in

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the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(19)~~(20) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(20)~~(21) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

~~(21)~~(22) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

~~(22)~~(23) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

~~(23)~~(24) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

~~(24)~~(25) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

~~(25)~~(26) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

~~(26)~~(27) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(28) "Incidental boundary revision" means a change in the permit boundary necessary for reasons unforeseen in the original permit application that is small in relation to the original or amended permit area with

1 insignificant impacts relative to the entire operation.

2 ~~(27)~~(29) "Industrial or commercial" means land used for:

3 (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or
4 long-term storage of products. This includes all heavy and light manufacturing facilities.

5 (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other
6 commercial establishments.

7 ~~(28)~~(30) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities
8 of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid,
9 solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

10 (b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage
11 reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated
12 by the board of oil and gas conservation pursuant to Title 82, chapter 11.

13 ~~(29)~~(31) "Intermittent stream" means a stream or reach of a stream that is below the water table for at
14 least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

15 ~~(30)~~(32) "Land use" means specific uses or management-related activities, rather than the vegetative
16 cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may
17 include land used for support facilities that are an integral part of the land use. Land use categories include
18 cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial,
19 pastureland, land occasionally cut for hay, recreation, or residential.

20 (33) "Major revision" means a change in the mining or reclamation plan that:

21 (a) significantly changes the postmining drainage plan, the overall postmining land use, or the
22 bonding level of the permitted area; or

23 (b) adversely affects the reclaimability of the area or the hydrologic balance on or off the permitted
24 area.

25 ~~(34)~~(34) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale
26 in the usual course of trade.

27 ~~(32)~~(35) "Material damage" means, with respect to protection of the hydrologic balance, degradation or
28 reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit

1 area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality
2 standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an
3 existing water use is affected, is material damage.

4 ~~(33)~~(36) "Method of operation" means the method or manner by which the cut, open pit, shaft, or
5 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by
6 the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of
7 land affected.

8 ~~(34)~~(37) "Minable coal" means that coal that can be removed through strip- or underground-mining
9 methods adaptable to the location that coal is being mined or is planned to be mined.

10 ~~(35)~~(38) "Mineral" means coal and uranium.

11 (39) "Minor revision" means a change to the mining or reclamation plan that ~~adds less than 320~~
12 ~~acres to the increases the area of land affected by mining activities within a permitted area by a total of less~~
13 ~~than 320 acres from the amount initially approved and does not significantly increase the impact of the~~
14 ~~permitted disturbance. The term includes expansion into an adjacent permitted area provided the expansion~~
15 ~~does not significantly increase the impact from either permitted area.~~

16 ~~(36)~~(40) "Operation" means:

17 (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of
18 producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area,
19 including coal preparation plants; and

20 (b) all activities, including excavation incident to operations, or prospecting for the purpose of
21 determining the location, quality, or quantity of a natural mineral deposit.

22 ~~(37)~~(41) "Operator" means a person engaged in:

23 (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic
24 yards of mineral or overburden;

25 (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by
26 mining within 12 consecutive calendar months in any one location;

27 (c) operating a coal preparation plant; or

28 (d) uranium mining using in situ methods.

~~(38)~~(42) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

~~(39)~~(43) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

~~(40)~~(44) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(41)~~(45) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(42)~~(46) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(43)~~(47) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(44)~~(48) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

~~(45)~~(49) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

~~(46)~~(50) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses,

such as hiking, canoeing, and other undeveloped recreational uses.

~~(47)~~(51) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(48)~~(52) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(49)~~(53) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

~~(50)~~(54) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(54)~~(55) (a) "Strip mining" means any part of the process followed in the production of mineral by the open-cut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(52)~~(56) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(53)~~(57) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns

1 the surface.

2 ~~(54)~~(58) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of
3 the earth, that has been subjected to and influenced by genetic and environmental factors of parent material,
4 climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is
5 necessary for the growth and regeneration of vegetation on the surface of the earth.

6 ~~(55)~~(59) "Underground mining" means any part of the process that is followed in the production of a
7 mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations
8 penetrating the mineral stratum or strata. The term includes mining by in situ methods.

9 ~~(56)~~(60) "Unwarranted failure to comply" means:

10 (a) the failure of a permittee to prevent the occurrence of any violation of a permit or any
11 requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

12 (b) the failure to abate any violation of a permit or of this part because of indifference, lack of
13 diligence, or lack of reasonable care.

14 ~~(57)~~(61) "Waiver" means a document that demonstrates the clear intention to release rights in the
15 surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

16 ~~(58)~~(62) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape,
17 established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species,
18 including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops,
19 microtopography, or raptor perches.

20 ~~(59)~~(63) "Written consent" means a statement that is executed by the owner of the surface estate and
21 that is written on a form approved by the department to demonstrate that the owner consents to entry of an
22 operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining
23 and reclamation operations that fully comply with the terms and requirements of this part."

24

25 **Section 3.** Section 82-4-221, MCA, is amended to read:

26 **"82-4-221. Mining permit required.** (1) An operator may not engage in strip or underground mining
27 without having first obtained from the department a permit designating the area of land affected by the
28 operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected

1 during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground
2 mining upon the area of land described in the application and designated in the permit for a period of 5 years
3 from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon
4 application to the department at least 240 but not more than 300 days prior to the renewal date so long as the
5 operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the
6 reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at
7 the time of renewal. The renewal is further subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251.
8 On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not
9 be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining
10 operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may
11 grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation
12 precluding the commencement or threatening substantial economic loss to the permittee or by reason of
13 conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be
14 mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered
15 to have commenced strip- or underground-mining operations at the time the construction of the synthetic or
16 generating facility is initiated.

17 (2) As a condition to the issuance of each permit issued under this part, an authorized
18 representative of the department shall, without advance notice, have the right of entry to, upon, or through a
19 strip- or underground-mining operation or any premises in which any records required to be maintained under
20 this part are located and may, at reasonable times and without delay, have access to copy any records and
21 inspect any monitoring equipment or method of operation required under this part. When an inspection results
22 from information provided to the department by any person, the department shall notify that person when the
23 inspection is proposed to be made and that person must be allowed to accompany the inspector during the
24 inspection.

25 (3) ~~During the term of the permit, the permittee may submit an application for a revision of the~~
26 ~~permit, together with a revised reclamation plan, to the department. The department may not approve the~~
27 ~~application unless it finds that reclamation in accordance with this part would be accomplished. Application for~~
28 ~~minor revision must be approved or disapproved within a reasonable time, depending on the scope and~~

complexity, but within 60 days, which may be extended by an additional 30 days by mutual agreement of the department and the applicant. Applications for major revisions are subject to all the permit application requirements and procedures."

Section 4. Section 82-4-225, MCA, is amended to read:

"82-4-225. Application for increase or reduction in permit area amendment. (1) The department may increase or reduce the area of land affected by an operation under a permit on application by an operator. A permittee may apply to increase the permit boundary but an increase may not extend the period for which an original permit was issued. ~~An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it.~~ The operator shall file an amendment application and map in the same form and with the same content as required for an original application under this part and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the permit area of land affected, except for incidental boundary revisions and minor revisions.

(2) If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but the bond may not be reduced below \$10,000, except as provided in 82-4-223."

NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 1].

NEW SECTION. Section 6. Contingent termination. [This act] terminates on the date that the department of environmental quality certifies to the code commissioner that the office of surface mining of the United States department of the interior disapproves the changes to Montana's program that are provided in [this act]. The department of environmental quality shall submit certification within 60 days of the occurrence of the contingency.

- END -