



AN ACT DEFINING "COAL BENEFICIATION PLANT"; EXCLUDING COAL BENEFICIATION PLANTS FROM PERMITTING AND REGULATION UNDER THE MONTANA STRIP AND UNDERGROUND MINING RECLAMATION ACT; CLARIFYING THAT A COAL PREPARATION FACILITY REGULATED UNDER THAT ACT DOES NOT INCLUDE A FACILITY WHERE COAL IS PREPARED AND THEN CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON; CLARIFYING THAT A MINING OPERATION DOES NOT INCLUDE A FACILITY OR SURFACE PREMISES WHERE COAL IS CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON OR A COAL BENEFICIATION PLANT; AMENDING SECTION 82-4-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** 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) (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.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern

of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

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

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

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

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

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

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

(b) The term includes:

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

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

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

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

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

(8) "Board" means the board of environmental review provided for in 2-15-3502.

(9) "Coal beneficiation plant" means a commercial facility where coal is subject to coal preparation that is not operated, owned, or controlled by the mine operator of the mine providing the coal.

~~(9)~~(10) "Coal conservation plan" means the planned course of conduct of a ~~strip-~~ strip-mining or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(10)~~(11) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

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

~~(11)~~(12)(a) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation in connection with a strip-mine or underground-coal-mine. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(b) The term does not mean:

(i) a facility where coal is prepared and converted into another energy form or to a gaseous or liquid hydrocarbon; or

(ii) a coal beneficiation plant.

~~(12)~~(13) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(13)~~(14) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(14)~~(15) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(15)~~(16) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(16)~~(17) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

~~(17)~~(18) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in

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

(18)(19) "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.

(19)(20) "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.

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

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

(22)(23) "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.

(23)(24) "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.

(24)(25) "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.

(25)(26) "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-~~ strip-mining 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.

(26)(27) "Industrial or commercial" means land used for:

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

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other

commercial establishments.

~~(27)~~(28) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

~~(28)~~(29) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

~~(29)~~(30) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

~~(30)~~(31) "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

~~(31)~~(32) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(32)~~(33) "Minaable coal" means that coal that can be removed through ~~strip-~~ strip-mining or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(33)~~(34) "Mineral" means coal and uranium.

~~(34)~~(35) (a) "Operation" means:

~~(a)~~(i) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, except as provided in subsection (35)(b)(ii), including coal preparation plants; and

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

(b) The term does not mean:

(i) the surface premises, facilities, railroad loops, roads, and equipment used in the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon;

(ii) a commercial facility or surface premises where coal that is converted into another energy form or a gaseous or liquid hydrocarbon is prepared; or

(iii) a coal beneficiation plant.

~~(35)~~(36) (a) "Operator" means a person engaged in:

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

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

~~(c)~~(iii) operating a coal preparation plant; or

~~(d)~~(iv) uranium mining using in situ methods.

(b) The term does not mean a person operating a coal beneficiation plant.

~~(36)~~(37) "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.

~~(37)~~(38) "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.

~~(38)~~(39) "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.

~~(39)~~(40) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(40)~~(41) "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.

~~(41)~~(42) "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-~~strip-mining or underground-coal-mining and reclamation operations under this part.

~~(42)~~(43) "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.

~~(43)~~(44) "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.

~~(44)~~(45) "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.

~~(45)~~(46) "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).

~~(46)~~(47) "Residential" means land used for ~~single-~~single-family and multiple-family housing, mobile home parks, or other residential lodgings.

~~(47)~~(48) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(48)~~(49) (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:

- (i) remining; and
- (ii) coal preparation operated in connection with a strip mine.

(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.

~~(49)~~(50) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(50)~~(51) "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 the surface.

~~(51)~~(52) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(52)~~(53) (a) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata.

(b) The term includes:

- (i) mining by in situ methods; and
- (ii) coal preparation operated in connection with an underground mine.

~~(53)~~(54) "Unwarranted failure to comply" means:

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

~~(54)~~(55) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.



~~(55)~~(56) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(56)~~(57) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

**Section 2. Effective date -- contingency.** (1) [This act] is effective on the date that the office of surface mining reclamation and enforcement publishes notice in the federal register that [this act] is approved pursuant to 30 CFR 732.17.

(2) The department of environmental quality shall provide a copy of the notice described in subsection (1) to the code commissioner.

- END -

I hereby certify that the within bill,  
SB 0297, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

SENATE BILL NO. 297

INTRODUCED BY J. ESSMANN, OLSON, J. PETERSON, KEANE, BERRY, ANKNEY, MCGILLVRAY,  
MILBURN

AN ACT DEFINING "COAL BENEFICIATION PLANT"; EXCLUDING COAL BENEFICIATION PLANTS FROM PERMITTING AND REGULATION UNDER THE MONTANA STRIP AND UNDERGROUND MINING RECLAMATION ACT; CLARIFYING THAT A COAL PREPARATION FACILITY REGULATED UNDER THAT ACT DOES NOT INCLUDE A FACILITY WHERE COAL IS PREPARED AND THEN CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON; CLARIFYING THAT A MINING OPERATION DOES NOT INCLUDE A FACILITY OR SURFACE PREMISES WHERE COAL IS CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON OR A COAL BENEFICIATION PLANT; AMENDING SECTION 82-4-203, MCA; AND PROVIDING AN EFFECTIVE DATE.