

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

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

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

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

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

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

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

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

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

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

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

56 (ii) under study for this designation in an administrative proceeding commenced under
57 Subsection 40-10-24(2), unless the operator demonstrates that prior to January 1, 1977,
58 substantial legal and financial commitments were made to the operation;

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

60 (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated
61 or naturally subirrigated other than on:

62 (A) undeveloped range lands that are not significant to farming on alluvial valley
63 floors; or

64 (B) lands which the division finds are of such small acreage that if farming is
65 interrupted, discontinued, or precluded, the impact on the farm's agricultural production will be
66 negligible; or

67 (ii) materially damage the quantity or quality of water in surface or underground water
68 systems that supply alluvial valley floors specified in Subsection (2)(e)(i), but this Subsection
69 (2)(e) shall not affect those surface coal mining operations which in the year preceding August
70 3, 1977, produced coal in commercial quantities and were located within or adjacent to alluvial
71 valley floors or had obtained specific permit approval by the division to conduct surface coal
72 mining operations within these alluvial valley floors; and

73 (f) if the private mineral estate has been severed from the private surface estate, the
74 applicant has submitted to the division:

75 (i) the written consent of the surface owner to the extraction of coal by surface mining
76 methods provided that nothing in this Subsection (2) shall be construed to:

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

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

79 (ii) a conveyance that expressly grants or reserves the right to extract the coal by
80 surface mining methods; or

81 (iii) documentation consistent with state law that establishes the status of the
82 surface-subsurface legal relationship.

83 (3) (a) (i) The applicant shall file with the permit application a list of any notices of
84 violations of the Surface Mining Control and Reclamation Act of 1977 or its implementing
85 regulations, this chapter, any state or federal program or law approved under the Surface
86 Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., and any law, rule,
87 or regulation of the United States, State of Utah, or any department or agency in the United
88 States pertaining to air or water environmental protection incurred by the applicant in
89 connection with any surface coal mining operation during the three-year period prior to the date
90 of application.

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

93 (b) If the list or other information available to the division indicates that any surface
94 coal mining operation owned or controlled by the applicant is currently in violation of this

95 chapter or other laws and regulations referred to in this Subsection (3), the permit shall not be
96 issued until the applicant submits proof that the violation has been corrected or is in the process
97 of being corrected to the satisfaction of the division, department, or agency which has
98 jurisdiction over the violation.

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

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

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

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

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

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

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

126 Section 2. Section **40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/09)** is amended to read:
127 **40-10-17 (Subsect (2)(t)(ii) Repeal 09/30/09). Performance standards for all coal**
128 **mining and reclamation operations -- Additional standards for steep-slope surface coal**
129 **mining -- Variances.**

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

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

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

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

145 (c) Except as provided in Subsection (3) with respect to all surface coal mining
146 operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic
147 materials) and grade in order to restore the approximate original contour of the land with
148 highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order
149 to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter); but
150 in surface coal mining which is carried out at the same location over a substantial period of
151 time where the operation transects the coal deposit and the thickness of the coal deposits
152 relative to the volume of the overburden is large and where the operator demonstrates that the
153 overburden and other spoil and waste materials at a particular point in the permit area or
154 otherwise available from the entire permit area is insufficient, giving due consideration to
155 volumetric expansion, to restore the approximate original contour, the operator, at a minimum,
156 shall backfill, grade, and compact (where advisable) using all available overburden and other

157 spoil and waste materials to attain the lowest practicable grade but not more than the angle of
158 repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in
159 order to achieve an ecologically sound land use compatible with the surrounding region. In
160 surface coal mining where the volume of overburden is large relative to the thickness of the
161 coal deposit and where the operator demonstrates that due to volumetric expansion the amount
162 of overburden and other spoil and waste materials removed in the course of the mining
163 operation is more than sufficient to restore the approximate original contour, the operator shall,
164 after restoring the approximate contour, backfill, grade, and compact (where advisable) the
165 excess overburden and other spoil and waste materials to attain the lowest grade but more than
166 the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve
167 an ecologically sound land use compatible with the surrounding region and that the overburden
168 or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water
169 pollution and is revegetated in accordance with the requirements of this chapter.

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

173 (e) Remove the topsoil from the land in a separate layer, replace it on the backfill area,
174 or if not utilized immediately, segregate it in a separate pile from other spoil, and when the
175 topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of
176 the topsoil, maintain a successful cover by quick growing plant or other means thereafter so
177 that the topsoil is preserved from wind and water erosion, remains free of any contamination by
178 other acid or toxic material, and is in a usable condition for sustaining vegetation when restored
179 during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining
180 vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then
181 the operator shall remove, segregate, and preserve in a like manner the other strata which is
182 best able to support vegetation.

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

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

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

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

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

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

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

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

207 (ii) the impoundment dam construction will be so designed as to achieve necessary
208 stability with an adequate margin of safety compatible with that of structures constructed under
209 Public Law 83-566 (16 U.S.C. 1006);

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

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

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

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

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

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

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

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

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

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

236 (ii) (A) conducting surface coal mining operations so as to prevent, to the extent
237 possible using the best technology currently available, additional contributions of suspended
238 solids to streamflow or runoff outside the permit area, but in no event shall contributions be in
239 excess of requirements set by applicable state or federal law; and

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

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

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

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

249 (vi) preserving throughout the mining and reclamation process the essential hydrologic

250 functions of alluvial valley floors in the arid and semiarid areas of the state; and

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

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

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

262 (i) the nature, timing, and sequencing of the approximate coincidence of specific
263 surface mine activities with specific underground mine activities are jointly approved by the
264 departments, divisions, and agencies concerned with surface mine reclamation and the health
265 and safety of underground miners; and

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

268 (m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or
269 abandon, in accordance with the standards and criteria developed pursuant to the division's
270 rules, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal
271 processing wastes, or other liquid and solid wastes, and used either temporarily or permanently
272 as dams or embankments.

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

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

279 (i) provide adequate advance written notice to local governments and residents who
280 might be affected by the use of the explosives by publication of the planned blasting schedule

281 in a newspaper of general circulation in the locality and by mailing a copy of the proposed
282 blasting schedule to every resident living within 1/2 mile of the proposed blasting site and by
283 providing daily notice to resident/occupiers in these areas prior to any blasting;

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

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

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

297 (v) provide that upon the request of a resident or owner of a man-made dwelling or
298 structure within 1/2 mile of any portion of the permitted area, the applicant or permittee shall
299 conduct a preblasting survey of the structures and submit the survey to the division and a copy
300 to the resident or owner making the request, the area of which survey shall be decided by the
301 division and shall include such provisions as promulgated.

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

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

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

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

315 (C) the applicant has satisfactorily demonstrated that the plan for the underground
316 mining operations conforms to requirements for underground mining in the jurisdiction and
317 that permits necessary for the underground mining operations have been issued by the
318 appropriate authority;

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

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

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

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

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

329 (iv) if liability under the bond filed by the applicant with the division pursuant to
330 Section 40-10-15 shall be for the duration of the underground mining operations and until the
331 requirements of this Subsection (2) and Section 40-10-16 have been fully complied with.

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

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

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

343 use plan.

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

356 (ii) on lands eligible for re-mining, assume the responsibility for successful revegetation
357 for a period of two full years after the last year of augmented seeding, fertilizing, irrigation, or
358 other work in order to assure compliance with the applicable standards, except in areas of the
359 state where the average annual precipitation is 26 inches or less, assume the responsibility for
360 successful revegetation for a period of five full years after the last year of augmented seeding,
361 fertilizing, irrigation, or other work in order to assure compliance with the applicable standards.

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

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

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

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

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

373 (iv) the disposal area does not contain springs, natural water courses, or wet weather

374 seeps unless lateral drains are constructed from the wet areas to the main underdrains in a
375 manner that filtration of the water into the spoil pile will be prevented;

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

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

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

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

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

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

392 (x) To the extent possible, using the best technology currently available, minimize
393 disturbances and adverse impacts of the operation on fish, wildlife, and related environmental
394 values, and achieve enhancement of these resources where practicable.

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

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

405 Subsection (3).

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

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

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

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

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

423 (4) The following performance standards shall be applicable to steep-slope surface coal
424 mining and shall be in addition to those general performance standards required by this section;
425 but the provisions of this Subsection (4) shall not apply to those situations in which an operator
426 is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered
427 through which the mining operation is to proceed, leaving a plain or predominantly flat area or
428 where an operator is in compliance with provisions of Subsection (3):

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

434 (b) Complete backfilling with spoil material shall be required to cover completely the
435 highwall and return the site to the appropriate original contour, which material will maintain

436 stability following mining and reclamation.

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

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

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

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

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

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

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