

HOUSE BILL NO. 576

INTRODUCED BY R. KNUDSEN, S. GUNDERSON, S. GIST, S. VINTON, J. HINKLE, M. BINKLEY, K.

WALSH, G. PARRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WATER AND COAL MINING; PROVIDING THAT NONSIGNIFICANT CHANGES IN WATER QUALITY INCLUDE COAL OPERATIONS ADJACENT TO EPHEMERAL DRAINAGEWAYS AND INTERMITTENT STREAMS UNDER CERTAIN CONDITIONS; REVISING THE DEFINITION OF "MATERIAL DAMAGE" TO INCLUDE THE EFFECT OF COAL MINING ON THE HYDROLOGIC BALANCE; PROVIDING RULEMAKING AUTHORITY; DIRECTING AN AMENDMENT TO 17.24.301 TO REMOVE CERTAIN DEFINITIONS; AMENDING SECTIONS 75-5-317 AND 82-4-203, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. Section 1. Department to amend rule. The department of environmental quality shall amend ARM 17.24.301 to remove the two subsections defining "material damage" and the subsection defining "materially damage the quantity or quality of water".

Section 2. Section 75-5-317, MCA, is amended to read:

"75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

1 (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water
2 management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental
3 protection agency-approved label and when existing and anticipated uses will be fully protected;

4 (d) changes in existing water quality resulting from an emergency or remedial activity that is
5 designed to protect public health or the environment and is approved, authorized, or required by the
6 department;

7 (e) changes in existing ground water quality resulting from treatment of a public water supply
8 system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other
9 similar means that is designed to protect the public health or the environment and that is approved, authorized,
10 or required by the department;

11 (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water
12 well or monitoring well drilling, development, or abandonment, if used according to department-approved water
13 quality protection practices and if no discharge to surface water will occur;

14 (g) short-term changes in existing water quality resulting from activities authorized by the
15 department pursuant to 75-5-308;

16 (h) land application of animal waste, domestic septage, or waste from public sewage treatment
17 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates
18 are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

19 (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for
20 irrigation during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

21 (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from
22 a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and
23 constructed in accordance with Title 75, chapter 6;

24 (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic
25 pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage
26 reservoirs, conducted in accordance with department-approved water quality protection practices;

27 (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not
28 result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82,

- 1 chapter 11;
- 2 (m) short-term changes in existing water quality resulting from ordinary and everyday activities of
- 3 humans or domesticated animals, including but not limited to:
- 4 (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and
- 5 camping;
- 6 (ii) fording of streams or other bodies of water by vehicular or other means; and
- 7 (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated
- 8 animals;
- 9 (n) coal and uranium prospecting that does not result in a discharge to surface water, that does not
- 10 involve a test pit located in surface water or that may affect surface water, and that is performed in accordance
- 11 with Title 82, chapter 4;
- 12 (o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle
- 13 graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part
- 14 5;
- 15 (p) hazardous waste management facilities permitted and operated in accordance with Title 75,
- 16 chapter 10, part 4;
- 17 (q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water
- 18 and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- 19 (r) stream-related construction projects or stream enhancement projects that result in temporary
- 20 changes to water quality but do not result in long-term detrimental effects and that have been authorized
- 21 pursuant to 75-5-318;
- 22 (s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- 23 (t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works
- 24 that are related to existing water rights and that are within wilderness areas so long as existing and anticipated
- 25 beneficial uses are protected and as long as the changes in existing water quality relative to the project are
- 26 short term;
- 27 (u) discharges of total phosphorus or total nitrogen that do not:
- 28 (i) create conditions that are toxic or harmful to human, animal, plant, and aquatic life;

1 (ii) create conditions that produce undesirable aquatic life; or
 2 (iii) cause measurable changes in aquatic life; ~~and~~
 3 (v) coal mining and reclamation activities that may affect the water quality of an adjacent
 4 ephemeral drainageway or intermittent stream for which the nonanthropogenic condition of the drainageway or
 5 stream exceeds the water quality standard and for which an applicant has prepared an acceptable hydrologic
 6 reclamation plan developed under Title 82, chapter 4, part 2, that demonstrates no change in the water quality
 7 classification for the affected drainageway or stream. For the purposes of this subsection (2)(v), "ephemeral
 8 drainageway" and "intermittent stream" have the meanings provided in 82-4-203.

9 ~~(v)~~(w) any other activity that is ~~nonsignificant~~ nonsignificant because of its low potential for harm to
 10 human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."
 11

12 **Section 3.** Section 82-4-203, MCA, is amended to read:

13 **"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions
 14 apply:

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

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

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

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

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

27 (5) "Approximate original contour" means that surface configuration achieved by backfilling and
 28 grading of the mined area so that the reclaimed area, including any terracing or access roads, closely

1 resembles the general surface configuration of the land prior to mining and blends into and complements the
2 drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so
3 that:

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

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

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

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

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

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

20 (b) The term includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (18) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in
27 the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

28 (19) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by

1 an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of
2 compliance with reclamation standards established by the department is not considered failure to conserve
3 coal.

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

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

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

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

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

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

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

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

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

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

1 commercial establishments.

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

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

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

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

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

17 (32) "Material damage" means:

18 (a) _____ with respect to protection of the hydrologic balance, significant long-term or permanent
19 degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of
20 the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected,
21 water quality standards are violated, or water rights are impacted; ~~Violation of a water quality standard,~~
22 ~~whether or not an existing water use is affected, is material damage.~~

23 (b) _____ with respect to an alluvial valley floor, changes in the quality or quantity of the water supply to
24 any portion of the alluvial valley floor when the changes are caused by coal mining and reclamation operations
25 and result in further changes that significantly decrease the capability of the alluvial valley floor to support
26 subirrigation or flood irrigation for agricultural activities; and

27 (c) _____ with respect to subsidence caused by an underground coal mining operation:

28 (i) _____ any functional impairment of surface lands, features, or structures;

1 (ii) any physical change that has a significant adverse impact on the affected land's capability to
2 support any current or reasonably foreseeable uses or causes significant loss in production or income; or
3 (iii) any significant change in the condition, appearance, or utility of any structure or facility from its
4 presubsidence condition.

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

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

11 (35) "Mineral" means coal and uranium.

12 (36) "Operation" means:

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

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

18 (37) "Operator" means a person engaged in:

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

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

23 (c) operating a coal preparation plant; or

24 (d) uranium mining using in situ methods.

25 (38) "Overburden" means:

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

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

28 (39) "Pastureland" means land used primarily for the long-term production of adapted, domesticated

1 forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

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

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

6 (42) "Prime farmland" means land that:

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

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

10 (43) "Prospecting" means:

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

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

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

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

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

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

23 (46) "Recreation" means land used for public or private leisure-time activities, including developed
24 recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses,
25 such as hiking, canoeing, and other undeveloped recreational uses.

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

1 of geology, soil, slope, and vegetation in the permit area.

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

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

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

8 (51) (a) "Strip mining" means any part of the process followed in the production of mineral by the
9 opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit
10 and removes mineral directly through a series of openings made by a machine that enters the deposit from a
11 surface excavation or any other mining method or process in which the strata or overburden is removed or
12 displaced in order to recover the mineral.

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

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

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

18 (53) "Surface owner" means:

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

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

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

24 (d) the appropriate federal land management agency when the United States government owns
25 the surface.

26 (54) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of
27 the earth, that has been subjected to and influenced by genetic and environmental factors of parent material,
28 climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is

1 necessary for the growth and regeneration of vegetation on the surface of the earth.

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

5 (56) "Unwarranted failure to comply" means:

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

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

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

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

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

20

21 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
23 the part remains in effect in all valid applications that are severable from the invalid applications.

24

25 **NEW SECTION. Section 5. Contingent voidness.** (1) If the United States secretary of the interior
26 disapproves any provision of [this act] pursuant to 30 CFR 732, then that portion of [this act] is void.

27 (2) The department of environmental quality shall notify the code commissioner of a disapproval
28 under subsection (1) within 15 days of the effective date of the disapproval.

1
2
3
4
5
6
7
8

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act].

- END -