

CHAPTER 53

**NATURAL RESOURCES**

**HOUSE BILL 95-1245**

BY REPRESENTATIVES Entz, Reeser, Acquafresca, Hagedorn, and Taylor;  
also SENATORS Wattenberg, Alexander, Mutzebaugh, and Norton.

**AN ACT**

**CONCERNING THE CONFORMITY OF PROVISIONS OF THE "COLORADO SURFACE COAL MINING RECLAMATION ACT" TO FEDERAL LAW, AND, IN CONNECTION THEREWITH, CONFORMING THE REFERENCE TO COAL MINE WASTE, INCLUDING MINING BY GOVERNMENTAL ENTITIES, DELETING PROVISIONS FOR AN EXEMPTION OF INCIDENTAL EXTRACTION OF COAL AND OF THE AUTOMATIC REPEAL OF RULES, ALLOWING EXTENSION OF PERMIT AREA BY PERMIT REVISION, REQUIRING SUBSIDENCE IMPACT MITIGATION, AND AUTHORIZING RULES TO ADDRESS IMPROVIDENTLY ISSUED PERMITS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 34-33-103 (14), (21), and (26) (a), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

**34-33-103. Definitions.** As used in this article, unless the context otherwise requires:

(14) "Operator" means any person engaged in surface coal mining and reclamation operations who removes or intends to remove more than two hundred fifty tons of coal from the earth or from coal MINE waste disposal facilities within twelve consecutive calendar months in any one location.

(21) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, Indian tribe conducting surface coal mining AND RECLAMATION operations outside Indian lands, ~~or~~ ANY other business organization, AND ANY AGENCY, UNIT, OR INSTRUMENTALITY OF FEDERAL, STATE, OR LOCAL GOVERNMENT, INCLUDING ANY PUBLICLY OWNED UTILITY OR PUBLICLY OWNED CORPORATION OF FEDERAL, STATE, OR LOCAL GOVERNMENT.

(26) "Surface coal mining operations" means:

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(a) Activities conducted on the surface of lands in connection with a surface coal mine or activities subject to the requirements of section 34-33-121 which involve surface operations and surface impacts incident to an underground coal mine. Such activities include ~~removal~~ excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, removal of coal from coal MINE waste disposal facilities, the use of explosives and blasting, and the use of in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; except that such activities do not include any of the following: ~~The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale or~~ Coal exploration subject to section 34-33-117, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe, or the extraction of geothermal resources. ~~and~~

**SECTION 2.** 34-33-108 (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**34-33-108. Rules and regulations - no more stringent.** (2) Any rule or regulation promulgated by the board which is required by a federal law, rule, or regulation shall become repealed and shall not be enforced when said federal law is repealed or said federal rule or regulation is deleted or withdrawn. Any provision of a permit issued under this article that is required by any rule of the board which is repealed in accordance with this subsection (2) shall not be enforceable. The repeal of such rule or regulation shall become effective ~~sixty~~ NINETY days after publication of the repeal in the federal register but, UPON REQUEST, will be subject to a rule-making hearing by the board as set forth in article 4 of title 24, C.R.S.

**SECTION 3.** 34-33-115 (1) (c), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**34-33-115. Revision of permits.** (1) (c) Any applications for extension of the area covered by the permit, except incidental boundary revisions, must be made by application for A PERMIT REVISION OR another permit.

**SECTION 4.** 34-33-121 (2) (a), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

**34-33-121. Surface effects of underground coal mining.** (2) Each permit issued under this article and relating to underground coal mining shall require the operator to:

(a) (I) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner. ~~except that~~

(II) IF MATERIAL DAMAGE RESULTS FROM SUBSIDENCE CAUSED BY UNDERGROUND

COAL MINING OPERATIONS TO ANY OCCUPIED RESIDENTIAL DWELLING AND RELATED STRUCTURES OR ANY NONCOMMERCIAL BUILDING, THE OPERATOR OF THE UNDERGROUND COAL MINING OPERATIONS CONDUCTED ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (a), AS AMENDED, SHALL EITHER:

(A) PROMPTLY REPAIR THE DAMAGE BY REHABILITATING, RESTORING, OR REPLACING THE DAMAGED OCCUPIED RESIDENTIAL DWELLING AND RELATED STRUCTURES OR NONCOMMERCIAL BUILDING; OR

(B) COMPENSATE THE OWNER OF THE DAMAGED OCCUPIED RESIDENTIAL DWELLING AND RELATED STRUCTURE OR NONCOMMERCIAL BUILDING IN THE FULL AMOUNT OF THE DIMINUTION IN VALUE RESULTING FROM THE SUBSIDENCE. COMPENSATION MAY BE ACCOMPLISHED BY THE PURCHASE, PRIOR TO MINING, OF A NONCANCELLABLE, PREMIUM-PREPAID INSURANCE POLICY.

(III) Nothing in this ~~subsection (2)~~ SECTION shall be construed to prohibit ~~the standard method of room and pillar mining~~ OR INTERRUPT UNDERGROUND COAL MINING OPERATIONS.

**SECTION 5.** 34-33-123, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**34-33-123. Enforcement - civil and criminal penalties.** (13) (a) WHEN THE OFFICE DETERMINES THAT IT IMPROVIDENTLY ISSUED A PERMIT THAT SHOULD NOT HAVE BEEN ISSUED UNDER THE CRITERIA SET FORTH IN SECTION 34-33-114 (3), IT SHALL IMPLEMENT REMEDIAL MEASURES, INCLUDING DEVELOPMENT OF A COOPERATIVE PLAN WITH THE PERMITTEE, IMPOSITION OF A CONDITION ON THE PERMIT TO CORRECT THE REASON THAT THE PERMIT SHOULD NOT HAVE BEEN ISSUED UNDER SECTION 34-33-114 (3), OR ISSUANCE OF AN ORDER TO THE PERMITTEE TO SHOW CAUSE WHY THE PERMIT SHOULD NOT BE SUSPENDED OR REVOKED.

(b) WHEN AN ORDER TO SHOW CAUSE IS ISSUED PURSUANT TO THIS SUBSECTION (13), THE ORDER SHALL INCLUDE THE REASONS FOR THE FINDING THAT THE PERMIT WAS IMPROVIDENTLY ISSUED AND SHALL PROVIDE AN OPPORTUNITY FOR A PUBLIC HEARING BEFORE THE BOARD TO BE HELD IN ACCORDANCE WITH SECTION 34-33-124 AND PURSUANT TO RULES THE BOARD MAY ADOPT. RULES ADOPTED PURSUANT TO THIS SECTION SHALL BE NO LESS EFFECTIVE THAN THE FEDERAL RULES PROVIDED IN 30 C.F.R. 773.21.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 7, 1995