



ADMINISTRATIVE RULES OF MONTANA



17.24.301 DEFINITIONS

The following definitions apply to all terms used in the Strip and Underground Mine Reclamation Act and subchapters 3 through 13 of this chapter:

- (1) "Abandoned" is defined in 82-4-203, MCA.
- (2) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, and that is discharged from an active, inactive or abandoned strip or underground mining operation or from an area affected by such operations.
- (3) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or microbiological or weathering processes, form acids.
- (4) "Act" means the Montana Strip and Underground Mine Reclamation Act (Title 82, chapter 4, part 2, MCA).
- (5) "Active mining operation" means an operation at which mining and reclamation activities are regularly occurring on an ongoing basis. See also "inactive mining operation."
- (6) "Adjacent area" is defined in 82-4-203, MCA, as "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."
- (7) "Administratively complete application" means an application that contains information addressing application requirements in 82-4-222 and 82-4-231, MCA, and subchapters 3 through 13, and all information necessary to initiate processing and public review.
- (8) "Agricultural activities or farming" means, with respect to alluvial valley floors, use of any tract of land for the production of plant or domestic animal life where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.
- (9) "Agricultural use" means the use of any tract of land for the production of plant or domestic animal life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.
- (10) "Alluvial valley floor" is defined in 82-4-203, MCA.

- (11) "Alternative postmining land use" is discussed in 82-4-232(7) and (8), MCA.
- (12) "Amendment" means any change in the mine or reclamation plan that results in expansion or decrease of the operation's permitted boundaries, excluding incidental boundary changes. See also "major revision," "minor revision," and "incidental boundary change."
- (13) "Applicant/violator system" or "AVS" means an automated information system of applicant, permittee, operator, violation, and related data that the Office of Surface Mining maintains to assist in implementing the Surface Mining Control and Reclamation Act of 1977.
- (14) "Approximate original contour" is defined in 82-4-203, MCA.
- (15) "Aquifer" is defined in 82-4-203, MCA.
- (16) "Area of land affected" is defined in 82-4-203, MCA.
- (17) "Arid and semiarid area" means, in the context of alluvial valley floors, an area experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation.
- (18) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.
- (19) "Bench" is defined in 82-4-203, MCA.
- (20) "Best technology currently available" or "BTCA" means equipment, devices, systems, methods, or techniques that will:
 - (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event will result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and
 - (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques that are currently available anywhere as determined by the department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation structures.
 - (c) within the constraints of the Act and subchapters 3 through 13, the department has the discretion to determine the BTCA on a case-by-case basis.
- (21) "Cemetery" means any area of land where human bodies are interred.
- (22) "Coal conservation plan" is defined in 82-4-203, MCA.
- (23) "Coal preparation" and "coal preparation plant" are defined in 82-4-203, MCA.
- (24) "Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.
- (25) "Collateral bond" means an indemnity agreement in a sum certain that is payable to the department, executed by the permittee, and supported by deposit with the department of cash, negotiable bonds of the United States, state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the U.S.

- (26) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.
- (27) "Community or institutional building" means any structure, other than a public building or a dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services including, but not limited to, water supply, power generation or sewage treatment.
- (28) "Contour strip mining" is defined in 82-4-203, MCA.
- (29) "Cover" is the area of ground covered by the aerial (above ground) plant parts. Cover is usually expressed as absolute cover, relative cover, foliar cover, canopy cover, and/or basal cover.
- (30) "Cultural resources" means any historic, archaeologic, or other cultural site. Significant sites, at a minimum, include all sites eligible for or listed on the National Register of Historic Places.
- (31) "Cumulative hydrologic impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation operations on the hydrologic balance.
- (32) "Cumulative hydrologic impact area" means the area, including, but not limited to, the permit and mine plan area within which impacts to the hydrologic balance resulting from the proposed operation may interact with the impacts of all previous, existing and anticipated mining on surface and ground water systems. "Anticipated mining" includes, at a minimum, the entire projected lives through bond release of all operations with pending applications and all operations required to meet diligent development requirements for leased federal coal for which there is actual mine-development information available.
- (33) "Disturbed area" means an area from which vegetation, soil, spoil, overburden, fill, or mineral is removed or upon which vegetation, soil, overburden, spoil, fill, sediment, water, processing waste, underground development waste, or garbage or other debris is placed by strip or underground mining and reclamation operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance is released.
- (34) "Diversion" means a channel, embankment, or other manmade structure constructed to divert undisturbed runoff around an area of disturbance and back to an undisturbed channel.
- (35) "Domestic water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or sanitation or domestic use.
- (36) "Downslope" means the land surface between the projected outcrop of the lowest coal seam being mined along each highwall and a valley floor.
- (37) "Dwelling" means a building inhabited by or useful for habitation by a person or persons.
- (38) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.
- (39) "Ephemeral drainageway" is defined in 82-4-203, MCA, as "a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of a cover of snow or ice and is always above the local water table."

- (40) "Essential hydrologic functions" means, with respect to an alluvial valley floor, the collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.
- (a) The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.
 - (b) The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.
 - (c) The role of the alluvial valley floor in regulating the natural flow of surface water results from the valley geomorphic characteristics and physical configuration of the channel flood plain and adjacent low terraces.
 - (d) The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.
 - (e) The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for the growth of agriculturally useful plants.
- (41) "Excess spoil" means spoil material disposed of in a location other than the mined-out area, provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain, in accordance with ARM 17.24.313 and 17.24.501, in non-steep slope areas may not be considered excess spoil. See ARM 17.24.520.
- (42) "Farm" is defined in ARM 17.24.325(3).
- (43) "Federal coal regulatory authority" means the federal agency responsible for administration of the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).
- (44) "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.
- (45) "Fragile lands" is defined in ARM 17.24.1141(1).
- (46) "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or strip or underground mining operations or both. During such operations it may include emissions from haul roads, wind erosion of exposed surfaces, storage piles and spoil piles, reclamation operations and other activities in which material is either removed, stored, transported, or redistributed.
- (47) "Good ecological integrity" means that the complex of community of organisms and its environment functioning as an ecological unit possesses components and processes in good

working order. Pastureland and cropland managed in accordance with county or local conservation district or state or federal best management practices (resource management strategies, such as normal husbandry practices, used to manage or protect a resource and promote ecological and economic sustainability) generally reflect good ecological integrity with regard to such land uses.

- (48) "Ground water" means subsurface water or underground streams contained in the unsaturated and saturated zones.
- (49) "Habit or characteristic pattern" means, with respect to ARM 17.24.634(1)(a), the particular reactions of drainage channels to general laws related to stream work, channel morphology and stability, whether or not the channels have attained the conditions of equilibrium.
- (50) "Head-of-hollow fill" means a fill structure consisting of any material, other than non-coal organic material, placed in the uppermost reaches of a hollow or a naturally occurring drainage where side slopes of the existing hollow or drainage measured at the steepest point are greater than 20% or the average slope of the profile of the hollow or drainage from the toe of the fill to the top of the fill is greater than 10%. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area. (See ARM 17.24.520(14).)
- (51) "Higher or better uses" is defined in 82-4-203, MCA, as "postmining land uses that have a higher economic value or noneconomic benefit to the landowners or the community than the premining land uses."
- (52) "Highwall" means the face of exposed overburden and mineral in strip mining operations or for entry to underground mining operations.
- (53) "Historic lands" is defined in ARM 17.24.1141(2).
- (54) "Historically used for cropland" means:
 - (a) lands that have been used for cropland for any five years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing, through resale, lease or option, strip or underground coal mining and reclamation operations;
 - (b) lands that the department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or
 - (c) lands that would likely have been used for cropland for any five or more years out of the 10 years immediately preceding such acquisition but for the same fact of ownership or control of the land as in (53)(a) unrelated to the productivity of the land.
- (55) "Hydrologic balance" is defined in 82-4-203, MCA.
- (56) "Hydrologic regime" means the entire state of water movement in a given area.
- (57) "Imminent danger to the health and safety of the public" is defined in 82-4-203, MCA.

- (58) "Impoundment" means a basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, slurry, sediment, waste or other liquid or semi-liquid material.
- (59) "Inactive mining operation" means an operation where:
- (a) the permit has been suspended for a period of two or more months,
 - (b) neither mining nor reclamation activity has ever occurred,
 - (c) the department has been informed that operations are temporarily suspended pursuant to ARM 17.24.521, or
 - (d) permanent cessation of operations has occurred pursuant to ARM 17.24.522, but bond has not yet been released.
- (60) "Incidental boundary revision" means a change in the permit boundary in which a few acres, generally less than 100, insignificant in impact relative to the entire operation, are added to or subtracted from the permit area for the purposes of associated disturbance, but not for mining. For administrative purposes, an incidental boundary revision is considered a minor revision.
- (61) "Intermittent stream" means a stream or reach of a stream that is below the local water table for at least some part of the water year, and obtains its flow from both surface runoff and ground water discharge.
- (62) "In situ processing" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal or uranium. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.
- (63) "Irreparable damage to the environment" means any damage to the environment, in violation of the Act or sub-chapters 4 through 12 of this chapter, that cannot be corrected by actions of the applicant.
- (64) "Knowingly," for purposes of ARM 17.24.1217, means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.
- (65) "Land use" is defined in 82-4-203, MCA, as "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."
- (a) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land that is used for facilities in support of cropland farming operations and is adjacent to, or an integral part of, these operations is also included in this category.
 - (b) "Pastureland" is defined in 82-4-203, MCA, as "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."

- (c) "Grazing land" is defined in 82-4-203, MCA, as "land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production."
 - (d) "Forestry" is defined in 82-4-203, MCA, as "land used or managed for the long-term production of wood, wood fiber, or wood-derived products."
 - (e) "Residential" means use of land for single- and multiple-family housing, mobile home parks, or other residential lodgings. Land that is used for facilities in support of residential operations and that is adjacent to, or an integral part of, these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.
 - (f) "Industrial/commercial" means use of land for:
 - (i) extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities, such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land that is used for facilities in support of these operations and is adjacent to, or an integral part of, such operations is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities; or
 - (ii) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land that is used for facilities in support of commercial operations and is adjacent to, or an integral part of, these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.
 - (g) "Recreation" is defined in 82-4-203, MCA, as "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."
 - (h) "Fish and wildlife habitat" is defined in 82-4-203, MCA, as "land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife."
 - (i) "Developed water resources" means use of land for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.
- (66) "Major revision" means any change in the mining or reclamation plan that:
- (a) results in a significant change in the postmining drainage plan;
 - (b) results in a change in the postmining land use;
 - (c) results in a significant change in the bonding level within the permitted area; or
 - (d) results in a change that may affect the reclaimability of the area or the hydrologic balance on or off of the permitted area.
- (67) "Material damage" means, with respect to subchapter 9 rules on underground mining operations:
- (a) any functional impairment of surface lands, features, structures or facilities;

- (b) any physical change that has an adverse impact on the capability of the affected land to support any current or reasonably foreseeable uses or causes loss in production or income; or
 - (c) any change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.
- (68) "Material damage" is defined in 82-4-203, MCA, as "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."
- (69) "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, to degrade or reduce by strip or underground coal mining or reclamation operations, the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support agricultural activities. The term "material damage" may be applied to values other than those associated with alluvial valley floors.
- (70) "Mine plan area" means the area of land and water within the boundaries of all permit areas during the entire life of the strip or underground mining operation. At a minimum, it includes all areas that are or will be affected during the entire life of those operations. Other terms defined elsewhere in this subchapter which relate closely to mine plan area are:
- (a) "permit area", which will always be within or the same as the mine plan area;
 - (b) "area of land affected", which will always be within or the same as the permit area; and
 - (c) "adjacent area", which may surround or extend beyond the area of land affected, permit area, or mine plan area. (See also 82-4-203, MCA.)
- (71) "Mineral" is defined in 82-4-203, MCA.
- (72) "Minor revision" means any change to the mine and reclamation plan not meeting the criteria for amendment or major revision.
- (73) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for plant germination and growth.
- (74) "Natural hazard lands" is defined in ARM 17.24.1141(3).
- (75) "Non-commercial building" means any building, other than an occupied residential dwelling, that, at the time subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in ARM 17.24.1132(1). Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.
- (76) "Noxious plants" means species that have been included on official state and county lists of noxious plants.
- (77) "Occupied residential dwelling and structures related thereto" means, with respect to subchapter 9 requirements for underground mining operations, any building or other structure that, at the

time any subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to: garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; lot drainage; and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

- (78) "Operation" is defined in 82-4-203, MCA.
- (79) "Operator" is defined in 82-4-203, MCA.
- (80) "Other treatment facilities" means, with respect to ARM 17.24.639(23), any chemical treatments (such as flocculation or neutralization) or mechanical structures (such as clarifiers or precipitators) that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area and to provide compliance with all applicable state and federal water quality laws and rules.
- (81) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
- (82) "Overburden" is defined in 82-4-203, MCA.
- (83) "Owned or controlled" and "owns or controls" mean any one or a combination of the following relationships:
 - (a) being a permittee of a strip or underground coal mining operation;
 - (b) based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity;
 - (c) having any other relationship which gives one person authority, directly or indirectly, to determine the manner in which an applicant, operator, or other entity conducts strip or underground coal mining operations; or
 - (d) unless it is demonstrated that the person does not in fact have the authority, directly or indirectly, to determine the manner in which the relevant coal mining operation is conducted:
 - (i) being an officer or director of an entity;
 - (ii) being the operator of a coal mining operation;
 - (iii) having the ability to commit the financial or real property assets or working resources of an entity;
 - (iv) being a general partner in a partnership;
 - (v) based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through 50 percent of the entity; or
 - (vi) owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive such coal after mining or having

authority to determine the manner in which that person or another person conducts this coal mining operation.

- (84) "Perennial stream" means a stream or reach of a stream that flows continuously during all of the water year as a result of ground water discharge or surface runoff. The term does not include intermittent streams or ephemeral streams.
- (85) "Permanent diversion" means a diversion that remains after a strip or underground mining and reclamation operation is completed and that has been approved for retention by the department and other appropriate state and federal agencies.
- (86) "Permanent impoundment" means an impoundment that is approved by the department and other appropriate state and federal agencies for retention as part of the postmining land use.
- (87) "Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the department. This area includes, at a minimum, all areas which are or will be affected by the strip or underground mining and reclamation operations during the term of the permit.
- (88) "Person having an interest which is or may be adversely affected or person with a valid legal interest" includes any person:
 - (a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by a prospecting or strip or underground mining operation or any related action of the department; or
 - (b) whose property is or may be adversely affected by a prospecting or strip or underground mining operation or any related action of the department.
- (89) "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these rules, "precipitation event" also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.
- (90) "Previously mined area" means land on which coal mining operations were previously conducted, except those lands subject to the standards of the Montana Strip and Underground Mine Reclamation Act or of the Surface Mine Control and Reclamation Act of 1977.
- (91) "Prime farmland" is defined in 82-4-203, MCA, as "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."
- (92) "Principal shareholder" means any person who is the record or beneficial owner of 10% or more of any class of voting stock.
- (93) "Probable hydrologic consequences" means the projected results of proposed strip or underground mining operations that may reasonably be expected to alter, interrupt, or otherwise affect the hydrologic balance. The consequences may include, but are not limited to, effects on stream channel conditions and the aquatic habitat on the permit area and adjacent areas.
- (94) "Productivity" means the vegetative yield produced by a unit area for a unit of time.
- (95) "Prospecting" is defined in 82-4-203, MCA.

- (96) "Public building" is defined in ARM 17.24.1132(1)(c).
- (97) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.
- (98) "Public park" is defined in ARM 17.24.1132(1)(e).
- (99) "Railroad loop" means any rail transportation system within the mine permit area, whether it is in the form of a loop or a straight rail line.
- (100) "Rangeland" means, with respect to alluvial valley floors, land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and shrublands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.
- (101) "Recharge capacity" means the ability of the soils and other earth materials to allow precipitation and runoff to infiltrate and percolate to the zone of saturation.
- (102) "Reclamation" is defined in 82-4-203, MCA.
- (103) "Recurrence interval" means the average interval (in years) between events equaling or exceeding a given magnitude. For example, a ten-year, 24-hour precipitation event is a 24-hour precipitation event that is equalled or exceeded on the average once every ten years.
- (104) "Reference area" is defined in 82-4-203, MCA, as "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."
- (105) "Remining" is defined in 82-4-203, MCA.
- (106) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.
- (107) "Replace adversely affected domestic water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by underground coal mining operations, to provide a water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision for an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.
- (a) Upon agreement by the operator and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the operator and the water supply owner.
 - (b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

- (108) "Road" means a surface right-of-way for purposes of travel by land vehicles used in prospecting or strip or underground mining or reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access, haul, and ramp roads constructed, used, reconstructed, improved, or maintained for use in prospecting or strip or underground mining operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. Subcategories of roads are as follows:
- (a) "Access road" means a road leading from a public roadway to the mine complex.
 - (b) "Haul road" means a road used for more than six months to transport coal, soil, or spoil.
 - (c) "Public road" is defined in ARM 17.24.1132(1)(g).
 - (d) "Ramp road" means a road leading from the pit to the haul road.
- (109) "Safety factor" means the ratio of the available shear strength to the developed shear stress or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.
- (110) "Sediment" means undissolved organic or inorganic material greater than 0.45 micrometers in size transported or deposited by water.
- (111) "Sedimentation pond" means a sediment control structure, including a barrier, dam, or excavated depression, which slows down runoff water to allow sediment to settle out. The term does not include sedimentation control practices, such as straw dikes, riprap, check dams, mulches, dugouts, in-pit sumps, and other similar measures that reduce overland flow velocity, reduce runoff volume, or trap sediment.
- (112) "Significant, imminent environmental harm to land, air or water resources" means:
- (a) An "environmental harm" is an adverse impact on land, air, or water resources. These resources include, but are not limited to, plant and animal life.
 - (b) An environmental harm is "imminent", if a condition, practice, or violation exists that:
 - (i) is causing such harm; or
 - (ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under 82-4-251, MCA.
 - (c) An environmental harm is "significant" if that harm is appreciable and not immediately reparable.
- (113) "Soil" means "topsoil" as defined as 82-4-203, MCA.
- (114) "Soil horizon" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The major types of soil horizons are described in issue 1 - revision of chapter 4 (as revised in May 1981) of the 1951 Soil Survey Manual, U.S. Department of Agriculture, Soil Conservation Service, June 9, 1981, Washington, D.C. This manual is available for inspection at the Department of Environmental Quality, 1520 E. 6th Ave., Helena, MT 59601, and at the national, state, and local offices of the U.S. natural resources conservation service.

- (115) "Soil survey" means field and related investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the national cooperative soil survey, which is based on procedures and standards in the following U.S. department of agriculture, soil conservation service publications: National Soils Handbook, Soil Taxonomy (Handbook 436), and Soil Survey Manual. These documents are on file and available for inspection at the main office of the Department of Environmental Quality, 1520 E. 6th Ave., Helena, MT 59601, and at the national, state, and local offices of the U.S. natural resources conservation service.
- (116) "Spoil" means overburden that has been removed during strip or underground mining operations.
- (117) "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the configuration of the mass, or by otherwise modifying physical, biological, or chemical properties, such as providing a protective surface coating.
- (118) "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from a sub-surface zone where water is available and suitable for use by vegetation. Subirrigation may be identified by:
- (a) diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;
 - (b) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;
 - (c) mottling of the soils in the root zones;
 - (d) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
 - (e) an increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.
- (119) "Subsidence" is defined in 82-4-203, MCA.
- (120) "Substantial legal and financial commitments" is defined in ARM 17.24.1141(4).
- (121) "Substantially disturb" means, for purposes of prospecting, to significantly impact land or water resources by:
- (a) drilling of uranium prospecting holes or blasting. Drilling of coal prospecting holes and installation and use of associated disposal pits or installation of ground water monitoring wells does not constitute substantial disturbance;
 - (b) removal of vegetation, topsoil, or overburden;
 - (c) construction of roads or other access routes;
 - (d) placement of excavated earth or waste material on the natural land surface; or
 - (e) other similar activities.
- (122) "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

- (123) "Surety bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in Montana.
- (124) "Surface water" means water that is either flowing or standing on the surface of the earth.
- (125) "Suspended solids or nonfilterable residue" (expressed as milligrams per liter), means organic or inorganic materials carried or held in suspension in water that are retained by a standard glass fiber filter in the procedure outlined by the environmental protection agency's regulations for waste water and analyses (40 CFR 136).
- (126) "Temporary diversion" means a diversion of a stream or overland flow that is used during prospecting or strip or underground mining or reclamation operations and not approved by the department to remain after reclamation as part of the approved postmining land use.
- (127) "Temporary impoundment" means an impoundment, including sedimentation pond, used during mining or reclamation operations, but not approved by the department to remain as part of the postmining land use.
- (128) "Test pit" means an excavation for prospecting by means other than drilling. Materials obtained from a test pit are used for test purposes and not for direct economic profit.
- (129) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
- (130) "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by prospecting or strip or underground mining operations and that contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
- (131) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct strip or underground mining operations under a permit issued by the department. See ARM 17.24.418.
- (132) "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of valleys which contain perennial or other streams with channels.
- (133) "Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.
- (134) "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands that have not been agronomically altered by farming, seeding, interseeding, or other means, to increase production over the native condition and that are not intensively managed as irrigated or subirrigated pastures.
- (135) "Unwarranted failure to comply" is defined in 82-4-203, MCA.
- (136) "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or material deposited by sheetwash, rillwash, or wind.

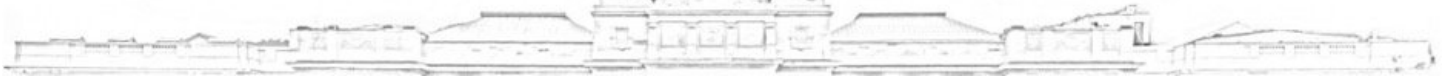
- (137) "Valley fill" means a fill structure consisting of any material other than non-coal organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 percent or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 percent.
- (138) "Valid existing rights" is defined in ARM 17.24.1132(1).
- (139) "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.
- (140) "Violation, failure, or refusal," for purposes of ARM 17.24.1217 means:
- (a) a violation of a condition of a permit issued pursuant to 82-4-221 or 82-4-226, MCA; or
 - (b) a failure or refusal to comply with any order issued under 82-4-251, MCA, or any order incorporated into a final decision issued under Title 82, chapter 4, part 2, MCA, except an order incorporated in a decision issued under 82-4-254(3), MCA.
- (141) "Waste" means earth materials that are generated as a result of mineral preparation or, in some cases, mining and are not marketed by the operator. The term includes earth materials resulting from physical or chemical processing, cleaning, or concentrating of the mineral. It also includes "coal processing waste" and "underground development waste" as defined in this rule and materials that contain reject mineral resulting from selective extraction of the mineral. "Waste" does not include "spoil, overburden, or soil" as those terms are defined in this rule.
- (142) "Waste disposal structure" means a pile, hill, mound, or other similar surface feature for the disposal of underground development waste or coal processing waste outside the mine workings and the surface excavation area. The term does not include an impoundment or embankment.
- (143) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.
- (144) "Wildlife habitat enhancement feature" is defined in 82-4-203, MCA, as "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."
- (145) "Willful violation" means an act or omission that violates the Act, subchapters 3 through 13 of this chapter, or any permit condition and that is committed by a person who intends the result which actually occurs.
- (146) "Willfully" for purposes of ARM 17.24.1217, means that an individual acted:
- (a) either intentionally, voluntarily, or consciously; and
 - (b) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation failure, or refusal.

Authorizing statute(s): 82-4-205, MCA

Implementing statute(s): 82-4-203, MCA



ADMINISTRATIVE RULES OF MONTANA



History: NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1990 MAR p. 936, Eff. 5/18/90; AMD, 1994 MAR p. 2957, Eff. 11/11/94; AMD, 1995 MAR p. 30, Eff. 1/13/95; AMD, 1995 MAR p. 31, Eff. 1/13/95; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1996 MAR p. 3050, Eff. 11/22/96; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04; AMD, 2012 MAR p. 737, Eff. 4/13/12; AMD, 2024 MAR p. 255, Eff. 2/10/24.