
HOUSE BILL No. 1237

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2-116.5; IC 14-21-1; IC 14-27-7-4; IC 14-34.

Synopsis: Coal mining regulation and archeology. Makes the following changes in the law concerning the division of historic preservation and archeology of the department of natural resources (DNR): (1) Provides that when the division is required or authorized to comment on any project or activity, the failure of the division to comment within the time provided by the applicable law constitutes the consent of the division to the project or activity as proposed. (2) Provides that when surveys, studies, or research are performed as a result of comments from the division, the division is prohibited from
(Continued next page)

Effective: July 1, 1998.

Stilwell

January 13, 1998, read first time and referred to Committee on Natural Resources.

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requiring or recommending that an activity or project be deferred or delayed until technical, grammatical, or stylistic corrections are made to a report of the surveys, studies, or research. (3) Requires the division to report annually on instances in which the division recommends the performance of archeological surveys. Makes the law on the regulation of dams, dikes, and levees inapplicable to a dam, dike, floodwall, or levee regulated under the law on surface coal mining and reclamation. Authorizes the director of the DNR to issue a surface coal mining and reclamation permit subject to the condition that the permittee obtain or maintain in force other licenses or permits required for the mining operation. Provides, for purposes of the requirement of notice and an administrative hearing before a surface coal mining permit may be revised, except for a nonsignificant revision, that: (1) a proposed revision is significant if certain conditions exist; and (2) certain other revisions are nonsignificant. Provides that a nonsignificant revision in a mining or reclamation plan must be reviewed and approved in writing by the director of the DNR before it may be implemented. Allows a proposed change in a mining permit that meets certain criteria to be approved as a minor field revision by a field inspector in an inspection report or on a form signed in the field. Allows the area covered by a mining permit to be extended without applying for a new permit in the case of an incidental boundary revision. Provides, for purposes of the requirement that reclamation efforts proceed as contemporaneously as practicable with surface coal mining operations unless an extension is approved by the director for good cause, that: (1) good cause includes unfavorable weather conditions, strikes, and equipment breakdowns; and (2) the requirement is satisfied by the completion of certain reclamation efforts by certain deadlines. Repeals a provision requiring the natural resources commission to adopt rules defining nonsignificant revisions of a surface coal mining and reclamation operations permit.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

HOUSE BILL No. 1237

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-116.5 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 1998]: **Sec. 116.5. "Good cause", for**
4 **purposes of an extension of the time for reclamation activities**
5 **under IC 14-34-10-2.5, includes, but is not limited to, the following:**

- 6 (1) **Unfavorable weather conditions.**
7 (2) **Strikes and other work disruptions due to labor disputes.**
8 (3) **Equipment breakdown or unavailability beyond the**
9 **permittee's reasonable ability to respond.**
10 (4) **Inability to reclaim without interfering with existing or**
11 **reasonably anticipated surface coal mining operations.**

12 SECTION 2. IC 14-21-1-12.1 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 1998]: **Sec. 12.1. (a) In any matter in which**
15 **the division is required or authorized to comment on any project**



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1 or activity that is conducted, licensed, permitted, or authorized by
 2 an agency of the state or the federal government, the failure of the
 3 division to comment within the time provided by the applicable law
 4 constitutes the consent of the division to the project or activity as
 5 proposed. For purposes of this subsection, the division may not
 6 defer its comment based upon a lack of information.

7 (b) In a matter in which an agency of the state or the federal
 8 government agrees to:

9 (1) perform; or

10 (2) require the performance of;

11 surveys, studies, or research as a result of comments submitted by
 12 the division on a project or activity that is conducted, licensed,
 13 permitted, or authorized by the state or a federal agency, the
 14 division may not require or recommend that an activity or a
 15 project must be deferred or delayed until technical, grammatical,
 16 or stylistic corrections are made to a report concerning the
 17 surveys, studies, or research.

18 SECTION 3. IC 14-21-1-19.1 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 19.1.** (a) Whenever the director
 20 is required or authorized to comment on a project or an activity
 21 that is conducted, licensed, permitted, or authorized by an agency
 22 of the state or the federal government, the failure of the director to
 23 comment within the time provided by the applicable law
 24 constitutes the consent of the director to the project or activity as
 25 proposed. For purposes of this subsection, the director may not
 26 defer the director's comment based upon a lack of information.

27 (b) In any matter in which an agency of the state or the federal
 28 government agrees to:

29 (1) perform; or

30 (2) require the performance of;

31 surveys, studies, or research as a result of comments submitted by
 32 the division on a project or an activity that is conducted, licensed,
 33 permitted, or authorized by the state or federal agency, the
 34 director may not require or recommend that an activity or a
 35 project must be deferred or delayed until technical, grammatical,
 36 or stylistic corrections are made to a report concerning the
 37 surveys, studies, or research.

38 SECTION 4. IC 14-21-1-32 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 1998]: **Sec. 32.** (a) Not later than September 1, the division shall
 41 report in writing to the natural resources commission established
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1 by IC 14-10-1-1 the following information with respect to the
2 preceding year:

3 (1) The number of instances in which the:

4 (A) division; or

5 (B) director, on the recommendation of the division;

6 recommends the performance of an archeological survey in
7 connection with a privately funded project that requires a
8 state or federal license or permit on which the division is
9 required or authorized to comment.

10 (2) The number of acres that would be covered by each
11 recommended survey referred to in subdivision (1).

12 (3) Of the recommended surveys referred to in subdivision
13 (1), the number of surveys actually performed.

14 (4) The number of archeological sites eligible for listing in the:

15 (A) register; or

16 (B) National Register of Historic Places maintained under
17 16 U.S.C. 470 et seq.;

18 that were discovered as a result of a recommended
19 archeological survey referred to in subdivision (1).

20 (b) The reports made under subsection (a) are public records
21 and must be made available for inspection and copying under
22 IC 5-14-3.

23 (c) This section does not authorize the director or the division to
24 require or recommend that applicants for permits or licenses be
25 required to submit information to the division for the purpose of
26 assisting the division in complying with this section.

27 SECTION 5. IC 14-27-7-4, AS ADDED BY P.L.1-1995, SECTION
28 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
29 1998]: Sec. 4. (a) The department shall make an engineering inspection
30 of all dams, levees, dikes, and floodwalls and appurtenant works:

31 (1) at least one (1) time every two (2) years or at more frequent
32 intervals if the exigencies of the case require; or

33 (2) upon the written request of an affected person or agency.

34 (b) The department shall place in the files of the department a report
35 of each inspection conducted under subsection (a).

36 (c) This chapter does not apply to the following:

37 (1) A dam that meets the following conditions:

38 (A) Is built for the sole purpose of erosion control, watering
39 livestock, recreation, or providing a haven or refuge for fish or
40 wildlife.

41 (B) Has a drainage area above the dam of not more than one
42 (1) square mile.

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- 1 (C) Does not exceed twenty (20) feet in height from the natural
 2 stream bed to spillway level.
 3 (D) Does not impound more than one hundred (100) acre-feet
 4 of water.
 5 (2) A levee, dike, or floodwall that meets the following
 6 conditions:
 7 (A) Is under a single private ownership.
 8 (B) Provides protection only to land or other property under
 9 the single private ownership.
 10 **(3) A dam, dike, floodwall, or levee that is regulated under**
 11 **IC 14-34.**

12 SECTION 6. IC 14-34-4-18, AS ADDED BY P.L.1-1995,
 13 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 1998]: Sec. 18. (a) Each permit issued by the director is
 15 subject to conditions imposed by the director. The conditions must
 16 include at a minimum a requirement for the operator to pay to the
 17 federal Office of Surface Mining all fees owed under 30 CFR Part 870.

18 **(b) The director may issue a permit subject to the condition that**
 19 **the permittee obtain or maintain in force other licenses or permits**
 20 **required for the surface coal mining and reclamation operation.**
 21 **However, the imposition of a condition under this subsection does**
 22 **not authorize or require the director to administer or enforce the**
 23 **requirements of any federal law or of any state law other than this**
 24 **article.**

25 SECTION 7. IC 14-34-5-7, AS ADDED BY P.L.1-1995, SECTION
 26 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 27 1998]: Sec. 7. (a) **Any revision to an approved mining or**
 28 **reclamation plan that would adversely affect the permittee's**
 29 **compliance with IC 14-34 is subject to review and approval by:**

- 30 (1) the director; or
 31 (2) the director's designated representative;
 32 **as provided in sections 7 through 8.1 of this chapter.**

33 ~~(a)~~ (b) The director may approve an application for a revision of a
 34 permit submitted under section 5 of this chapter if the application is
 35 based only on nonsignificant revisions of the permit. ~~(as defined in the~~
 36 ~~rules adopted under section 6 of this chapter).~~

37 ~~(b)~~ (c) The director may approve an application under subsection ~~(a)~~
 38 (b) without notice and a hearing.

39 SECTION 8. IC 14-34-5-8, AS ADDED BY P.L.1-1995, SECTION
 40 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 41 1998]: Sec. 8. (a) Unless an application for revision of a permit
 42 submitted under section 5 of this chapter is based only on

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1 nonsignificant revisions, (as defined in the rules adopted under section
2 6 of this chapter); the application may be approved only after the notice
3 and hearing requirements of this article for issuance of a permit have
4 been fulfilled.

5 (b) The director may impose other conditions for approval of the
6 application.

7 SECTION 9. IC 14-34-5-8.1 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 1998]: **Sec. 8.1. For purposes of sections 7 and 8 of this chapter,
10 a proposed revision of a permit is significant if any of the following
11 conditions exists:**

12 (1) **The changes may result in an adverse impact beyond that
13 previously considered, affecting cultural resources that are
14 listed on or eligible to be listed on:**

15 (A) the National Register of Historic Places; or

16 (B) the register of Indiana historic sites and historic
17 structures established under IC 14-21-1.

18 (2) **Blasting will be used in an area that was previously
19 classified in the permit as a nonblasting area.**

20 (3) **The changes may result in an adverse impact beyond that
21 previously considered, affecting a water supply to which
22 IC 14-25-4 applies.**

23 (4) **The changes:**

24 (A) **require the identification, disturbance, or handling of
25 toxic forming or acid forming materials different from
26 those previously considered; and**

27 (B) **have the potential for causing an additional impact not
28 previously considered.**

29 (5) **The changes may result in an adverse impact on fish,
30 wildlife, and related environmental values beyond that
31 previously considered.**

32 (6) **The addition of:**

33 (A) **a coal processing facility; or**

34 (B) **any permanent support facility;**

35 **is proposed, and the addition of the facility will cause an
36 impact not previously considered, except that the addition of
37 a temporary coal processing facility used exclusively for
38 crushing and screening need not be considered a significant
39 revision.**

40 SECTION 10. IC 14-34-5-8.2 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 1998]: **Sec. 8.2. (a) For purposes of sections**



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1 **7 and 8 of this chapter, a proposed permit revision that:**

2 **(1) is subject to the rule of the natural resources commission**
 3 **concerning coal mining and reclamation permitting**
 4 **procedures (310 IAC 12-3); and**

5 **(2) requires technical review or design analysis;**

6 **is a nonsignificant revision.**

7 **(b) The following are nonsignificant permit revisions under**
 8 **subsection (a):**

9 **(1) For surface mines, changes of the:**

10 **(A) direction of mining; or**

11 **(B) location of mining equipment;**

12 **within the permit area.**

13 **(2) The substitution of mining equipment designed for the**
 14 **same purpose, the use of which is not detrimental to the**
 15 **achievement of final reclamation or subsidence control.**

16 **(3) For underground mines, any change in the direction or**
 17 **location of mining within the permit area or shadow area in**
 18 **response to unanticipated events.**

19 **(4) Any other change in the mining or reclamation plan that**
 20 **the director reasonably determines:**

21 **(A) will not have a significant effect:**

22 **(i) on the achievement of final reclamation plans under**
 23 **IC 14-34-3-12;**

24 **(ii) on subsidence control plans; and**

25 **(iii) on the surrounding area;**

26 **(B) does not involve significant delay in achieving final**
 27 **reclamation or significant change in the land use; or**

28 **(C) is necessitated by unanticipated and unusually adverse**
 29 **weather conditions, other acts of God, strikes, or other**
 30 **causes beyond the reasonable control of the permittee, if**
 31 **all steps specified by the director to maximize**
 32 **environmental protection are taken.**

33 **SECTION 11. IC 14-34-5-8.3 IS ADDED TO THE INDIANA**
 34 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 35 **[EFFECTIVE JULY 1, 1998]: Sec. 8.3. A nonsignificant revision in**
 36 **a mining or reclamation plan must be:**

37 **(1) reviewed; and**

38 **(2) approved in writing;**

39 **by the director before it may be implemented.**

40 **SECTION 12. IC 14-34-5-8.4 IS ADDED TO THE INDIANA**
 41 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 42 **[EFFECTIVE JULY 1, 1998]: Sec. 8.4. (a) If the director determines**



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1 that a proposed change in a permit:

2 (1) is subject to the rule of the natural resources commission
3 concerning coal mining and reclamation permitting
4 procedures (310 IAC 12-3); but

5 (2) does not require technical review or design analysis;
6 the proposed change may be approved as a minor field revision by
7 a field inspector in an inspection report or on a form signed in the
8 field under IC 14-34-2-5.

9 (b) A minor field revision approved under this section:

10 (1) must be properly documented and separately filed; and

11 (2) may include the following:

12 (A) Soil stockpile location and configurations.

13 (B) As-built pond certifications.

14 (C) Minor transportation facilities changes.

15 (D) Any of the following for a pond:

16 (i) Depth.

17 (ii) Shape.

18 (iii) Orientation.

19 (E) An area for temporary drainage control or temporary
20 water storage.

21 (F) Equipment changes.

22 (G) Explosive storage areas.

23 (H) Minor mine management or support facility locations
24 (except for the disposal or storage of refuse).

25 (I) Adding United States Natural Resources Conservation
26 Service conservation practices.

27 (J) Methods of erosion protection on diversions.

28 (K) Temporary cessation of mining.

29 (L) Minor diversion location changes.

30 SECTION 13. IC 14-34-5-8.5 IS ADDED TO THE INDIANA
31 CODE AS A NEW SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 1998]: **Sec. 8.5. An extension of the area
33 covered by a permit, except for an incidental boundary revision
34 under section 8.6 of this chapter, must be made by applying for a
35 new permit.**

36 SECTION 14. IC 14-34-5-8.6 IS ADDED TO THE INDIANA
37 CODE AS A NEW SECTION TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 1998]: **Sec. 8.6. (a) For the area covered by
39 a permit to be extended under this section as an incidental
40 boundary revision, all of the following must apply:**

41 (1) The extension may not constitute a significant revision to
42 the method of conduct of mining or reclamation operations

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1 contemplated by the original permit.

2 (2) The extension must be required for the orderly and
3 continuous mining and reclamation operation.

4 (3) The extension must adjoin the permit or shadow area
5 acreage.

6 (4) The extended area must be mined and reclaimed in
7 conformity with the approved permit plans.

8 (5) The area of the extension may not exceed the lesser of:

9 (A) ten percent (10%) of the area originally covered by the
10 permit; or

11 (B) twenty (20) acres.

12 (b) The aggregate of all incidental boundary revisions of a
13 permit under this section may not exceed the area originally
14 covered by the permit by more than fifteen percent (15%).
15 However, the director may waive the limitation under this
16 subsection if the director finds that:

17 (1) all other provisions of this section are met; and

18 (2) the interests of the public are not adversely affected.

19 (c) The aggregate of all incidental boundary revisions of a
20 permit under this section that involve coal removal may not exceed
21 the area originally covered by the permit by more than ten percent
22 (10%).

23 (d) To obtain an incidental boundary revision under this section,
24 a permittee must submit to the director an application containing
25 the following:

26 (1) A statement of the size of:

27 (A) the original permit area; and

28 (B) the additional area that would be added by the
29 boundary revision.

30 (2) A statement of the uses that:

31 (A) were made of the land before mining; and

32 (B) will be made of the land after mining.

33 (3) A showing that the requirements of subsection (a) are met.

34 (4) A map showing the additional area to be added by the
35 boundary revision.

36 (5) Proof of the permittee's legal right to enter and conduct
37 surface coal mining and reclamation operations on the
38 additional area to be added by the boundary revision.

39 (6) Any necessary plans that are not contained in the permit
40 already approved.

41 (7) A statement indicating whether any areas unsuitable for
42 mining are contained in the permit already approved.

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1 (e) An application for an incidental boundary revision may not
 2 be approved unless the applicant demonstrates and the director
 3 finds the following:

4 (1) That reclamation of the area as required by this article
 5 can be accomplished.

6 (2) That the application complies with all requirements of this
 7 article.

8 (f) The director shall approve or deny an incidental boundary
 9 revision of a permit under this section within thirty (30) days after
 10 the application for the proposed boundary revision is submitted to
 11 the director, unless the director finds that more than thirty (30)
 12 days are needed to adequately review the application and make the
 13 findings required by subsection (e).

14 (g) This section does not alter the general requirements of this
 15 article for the submission of fees and bonds.

16 SECTION 15. IC 14-34-10-2, AS ADDED BY P.L.179-1995,
 17 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 1998]: Sec. 2. (a) As used in this section:

19 (1) "erosion" does not include the movement of soil or rock
 20 particles that does not cause:

21 (A) air or water pollution outside the area subject to a
 22 permit;

23 (B) the loss or contamination of materials required to be
 24 salvaged under this article; or

25 (C) interference with attainment of the approved
 26 post-mining land use; and

27 (2) "higher or better uses" means postmining land uses that have
 28 a higher:

29 (†) (A) economic value; or

30 (‡) (B) nonmonetary benefit;

31 to the landowner or the community than the premining land uses.

32 (b) In addition to other standards a permittee must meet under rules
 33 of the commission, a permittee shall do the following:

34 (1) Place markers on the site to readily identify the permit area.

35 (2) Conduct the surface coal mining operation in a manner that
 36 maximizes the use and conservation of the solid fuel resource that
 37 is recovered so that re-affecting the land in the future through
 38 surface coal mining is minimized.

39 (3) Restore the land affected to a condition capable of supporting
 40 the uses that the land was capable of supporting before mining or
 41 higher or better uses of which there is a reasonable likelihood if:

42 (A) those uses do not:

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- 1 (i) present an actual or a probable hazard to public health or
- 2 safety; or
- 3 (ii) pose an actual or a probable threat of water diminution
- 4 or pollution; and
- 5 (B) the permit applicant's declared proposed land use
- 6 following reclamation:
- 7 (i) is not impractical or unreasonable;
- 8 (ii) is not inconsistent with applicable land use policies and
- 9 plans;
- 10 (iii) does not involve unreasonable delay in implementation;
- 11 or
- 12 (iv) does not violate federal, state, or local law.
- 13 (4) Except as provided in subdivisions (5) and (6) and section 4
- 14 of this chapter with respect to all surface coal mining operations
- 15 backfill, compact where advisable to ensure stability or prevent
- 16 the leaching of toxic materials and grade to restore the
- 17 approximate original contour of the land with all highwalls, spoil
- 18 piles, and depressions eliminated. Small depressions are allowed
- 19 if needed to retain moisture to assist revegetation or as otherwise
- 20 authorized under this article.
- 21 (5) In a surface coal mining operation that:
- 22 (A) is carried out at the same location over a substantial time;
- 23 (B) transects the coal deposit and the thickness of the coal
- 24 deposit relative to the volume of the overburden that is large;
- 25 and
- 26 (C) has overburden and other spoil and waste materials at a
- 27 particular point in the permit area or otherwise available from
- 28 the entire permit area that is insufficient, giving due
- 29 consideration to volumetric expansion, to restore the
- 30 approximate original contour;
- 31 the operator, at a minimum, shall backfill, grade, and compact,
- 32 where advisable, using all available overburden and other spoil
- 33 and waste materials to attain the lowest practicable grade but not
- 34 more than the angle of repose to provide adequate drainage and
- 35 to cover all acid-forming and other toxic materials to achieve an
- 36 ecologically sound land use compatible with the surrounding
- 37 region.
- 38 (6) If in surface coal mining:
- 39 (A) the volume of overburden is large relative to the thickness
- 40 of the coal deposit; and
- 41 (B) the operator demonstrates that due to volumetric
- 42 expansion the amount of overburden and other spoil and waste

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- 1 materials removed in the course of the mining operation is
 2 more than sufficient to restore the approximate original
 3 contour;
 4 the operator shall, after restoring the approximate contour,
 5 backfill, grade, and compact, where advisable, the excess
 6 overburden and other spoil and waste materials to attain the
 7 lowest grade but not more than the angle of repose and to cover
 8 all acid-forming and other toxic materials to achieve an
 9 ecologically sound land use compatible with the surrounding
 10 region. The overburden or spoil shall be shaped and graded in a
 11 way that prevents slides, erosion, and water pollution and
 12 revegetated in accordance with the requirements of this article.
- 13 (7) Stabilize and protect all surface areas, including spoil piles,
 14 affected by the surface coal mining and reclamation operation to
 15 effectively control erosion and attendant air and water pollution.
- 16 (8) Remove the topsoil from the land in a separate layer and:
 17 (A) replace the topsoil on the backfill area; or
 18 (B) if the topsoil is not used immediately;
 19 (i) segregate the topsoil in a separate pile from other spoil;
 20 and
 21 (ii) if the topsoil is not replaced on a backfill area within a
 22 time short enough to avoid deterioration of the topsoil,
 23 maintain a successful cover by quick growing plants or other
 24 means so that the topsoil is preserved from wind and water
 25 erosion, remains free of any contamination by other acid or
 26 toxic material, and is in a usable condition for sustaining
 27 vegetation when restored during reclamation.
- 28 However, if the topsoil is of insufficient quantity or of poor
 29 quality to sustain vegetation or if other strata are more suitable for
 30 vegetation requirements, the operator shall remove, segregate, and
 31 preserve, in a like manner, the strata that are best able to support
 32 vegetation.
- 33 (9) Restore the topsoil or the best available subsoil that is best
 34 able to support vegetation.
- 35 (10) For all prime farmland as identified in IC 14-34-3-3(16),
 36 comply with the specifications for soil removal, storage,
 37 replacement, and reconstruction established by rules of the
 38 commission and do the following:
 39 (A) Segregate the A horizon of the natural soil unless it is
 40 shown that other available soil materials will create a final soil
 41 that has a greater productive capacity, stockpile this material,
 42 if not used immediately, separately from other spoil, and

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provide needed protection from wind and water erosion or contamination by other acid or toxic material.

(B) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are texturally and chemically suitable for plant growth and equal to or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that existing in the natural soil, stockpile this material, if not used immediately, separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material.

(C) Replace and regrade the root zone material described in clause (B) with proper compaction and uniform depth over the regraded spoil material.

(D) Redistribute and grade in a uniform manner the surface soil horizon described in clause (A).

(11) Create, if authorized in the approved surface coal mining and reclamation plan, permanent impoundments of water on mining sites. The permittee may create the permanent impoundment only after the permittee demonstrates the following:

(A) The size of the impoundment is adequate for the intended purposes.

(B) The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under 16 U.S.C. 1006.

(C) The quality of impounded water will be suitable, on a permanent basis, for the intended use and discharges from the impoundment will not degrade the water quality below water quality standards established under applicable federal and state law in the receiving stream.

(D) The level of water will be reasonably stable.

(E) Final grading will provide adequate safety and access for proposed water users.

(F) The water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(12) Conduct an augering operation associated with surface coal mining in a manner that maximizes the recoverability of mineral reserves remaining after the surface coal mining and reclamation

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operation is complete and seal all auger holes with an impervious and noncombustible material to prevent drainage except where the director determines that the resulting impoundment of water in those auger holes may create a hazard to the environment or the public health or safety. The director may prohibit augering if necessary to:

- (A) maximize the use, recoverability, or conservation of the solid fuel resources; or
- (B) protect against adverse water quality impacts.

(13) Minimize disturbances to the prevailing hydrologic balance at the mine site and associated offsite areas and to the quality and quantity of water in surface and ground water systems during and after surface coal mining and reclamation operations by doing the following:

- (A) Avoiding acid or other toxic mine drainage by measures such as the following:
 - (i) Preventing or removing water from contact with toxic-producing deposits.
 - (ii) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses.
 - (iii) Casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface water.
- (B) Conducting surface coal mining and reclamation operations so as to prevent, to the extent possible using the best technology currently available, violations of the effluent limitations for coal mining operations established under applicable state or federal law.
- (C) Constructing siltation structures under clause (B) before commencement of surface coal mining operations that will be certified by an engineer licensed under IC 25-31 and constructed as designed and approved in the reclamation plan.
- (D) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainageways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the director.
- (E) Restoring recharge capacity of the mined area to approximate premining conditions.
- (F) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

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- 1 (G) Other actions required under the permit.
- 2 (14) With respect to surface disposal of mine wastes, tailings, coal
- 3 processing wastes, and other wastes in areas other than the mine
- 4 workings or excavations, the following:
- 5 (A) Stabilize all waste piles in designated areas through
- 6 construction in compacted layers, including the use of
- 7 incombustible and impervious materials if necessary.
- 8 (B) Assure the following:
- 9 (i) The final contour of the waste pile will be compatible
- 10 with natural surroundings.
- 11 (ii) The site will be stabilized and revegetated according to
- 12 this article.
- 13 (15) Refrain from surface coal mining within five hundred (500)
- 14 feet of active and abandoned underground mines to prevent
- 15 breakthroughs and to protect the health or safety of miners.
- 16 However, the director shall permit an operator to mine near,
- 17 through, or partially through an abandoned underground mine or
- 18 closer to an active underground mine if the following conditions
- 19 exist:
- 20 (A) The nature, timing, and sequencing of the approximate
- 21 coincidence of specific coal surface mining activities with
- 22 specific underground coal mining activities are jointly
- 23 approved by the regulatory authorities concerned with surface
- 24 coal mining regulation and the health and safety of
- 25 underground miners.
- 26 (B) The operations will result in:
- 27 (i) improved resource recovery;
- 28 (ii) abatement of water pollution; or
- 29 (iii) elimination of hazards to the health and safety of the
- 30 public.
- 31 (16) Design, locate, construct, operate, maintain, enlarge, modify,
- 32 and remove or abandon, in accordance with the standards and
- 33 criteria used by the United States Secretary of the Interior to
- 34 ensure that flood control structures are safe and effectively
- 35 perform their functions, all existing and new coal mine waste
- 36 piles:
- 37 (A) consisting of:
- 38 (i) mine wastes;
- 39 (ii) tailings;
- 40 (iii) coal processing wastes; or
- 41 (iv) other liquid and solid wastes; and
- 42 (B) used temporarily or permanently as dams or embankments.

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- (17) Ensure the following:
 - (A) All debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried, and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface water.
 - (B) Contingency plans are developed to prevent sustained combustion.
- (18) Ensure that explosives are used only in accordance with the following:
 - (A) IC 14-34-12.
 - (B) Applicable state and federal law.
 - (C) The rules adopted by the commission.
- (19) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. However, if the applicant proposes to combine surface coal mining operations with underground coal mining operations to assure maximum practical recovery of the mineral resources, the director may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable and permit underground coal mining operations before reclamation if the following conditions are met:
 - (A) The director finds in writing the following:
 - (i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations.
 - (ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface.
 - (iii) The applicant has satisfactorily demonstrated that the plan for the underground coal mining operations conforms to the requirements for underground coal mining in that jurisdiction and that permits necessary for the underground coal mining operations have been issued by the appropriate authority.
 - (iv) The applicant has shown the areas proposed for the variance are necessary for the implementation of the proposed underground coal mining operations.
 - (v) Substantial adverse environmental damage, either onsite or offsite, will not result from the delay in completion of

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- 1 reclamation as required by this article.
- 2 (vi) The provisions for the offsite storage of spoil will
- 3 comply with subdivision (25).
- 4 (B) The commission has adopted specific rules to govern the
- 5 granting of variances in accordance with this subdivision.
- 6 (C) Variances granted under this subdivision are to be
- 7 reviewed by the director not more than three (3) years from the
- 8 date of issuance of the permit.
- 9 (D) Liability under the bond filed by the applicant with the
- 10 director under IC 14-34-6 is for the duration of underground
- 11 coal mining operations and until the requirements of this
- 12 section and IC 14-34-6 are fully complied with.
- 13 (20) Ensure that the construction, maintenance, and postmining
- 14 conditions of access roads into and across the site of operations
- 15 will control or prevent the following:
- 16 (A) Erosion and siltation.
- 17 (B) Pollution of water.
- 18 (C) Damage to the following:
- 19 (i) Fish or wildlife or their habitat.
- 20 (ii) Public or private property.
- 21 (21) Refrain from the construction of roads or other access ways:
- 22 (A) up a stream bed or drainage channel; or
- 23 (B) in the proximity of a channel;
- 24 that seriously alters the normal flow of water.
- 25 (22) Establish on the regraded areas and all other land affected a
- 26 diverse, an effective, and a permanent vegetative cover:
- 27 (A) of the same seasonal variety native to the area of land to be
- 28 affected; and
- 29 (B) that is capable of self-regeneration and plant succession at
- 30 least equal in extent of cover to the natural vegetation of the
- 31 area.
- 32 However, an introduced species may be used in the revegetation
- 33 process where desirable and necessary to achieve the approved
- 34 postmining land use plan.
- 35 (23) Assume the responsibility for successful revegetation, as
- 36 required by subdivision (22), as follows:
- 37 (A) On lands not eligible for remining, for five (5) full years
- 38 after the last year of augmented seeding, fertilizing, irrigation,
- 39 or other work to assure compliance with subdivision (22).
- 40 However, if the director approves a long term intensive
- 41 agricultural postmining land use, the applicable five (5) or ten
- 42 (10) year period of responsibility for revegetation commences

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at the date of initial planting for the long term intensive agricultural postmining land use. If the director issues a written finding approving a long term intensive agricultural postmining land use as part of the mining and reclamation plan, the director may grant exception to subdivision (22).

(B) On lands eligible for re-mining, for two (2) full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to ensure compliance with subdivision (22).

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

(25) Place all excess spoil material resulting from coal surface mining and reclamation activities to ensure the following:

(A) Spoil is transported and placed in a controlled manner in a position for concurrent compaction and in a manner that assures mass stability and prevents mass movement.

(B) The areas of disposal are within the bonded permit areas and all organic matter is removed immediately before spoil placement.

(C) Appropriate surface and internal drainage systems and diversion ditches are used in a manner that prevents spoil erosion and movement.

(D) The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in a manner that prevents filtration of the water into the spoil pile.

(E) If placed on a slope, the spoil is placed as follows:

(i) On the most moderate slope among the slopes on which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article.

(ii) If possible, upon or above a natural terrace, bench, or berm if the placement provides additional stability and prevents mass movement.

(F) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed.

(G) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(H) Design of the spoil disposal area is certified by an

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- 1 engineer licensed under IC 25-31 and in conformance with
- 2 professional standards.
- 3 (I) All other provisions of this article are met.
- 4 (26) To the extent possible using the best technology currently
- 5 available the following:
- 6 (A) Minimize disturbances and adverse impacts of the
- 7 operation on fish, wildlife, and related environmental values.
- 8 (B) Enhance those resources where practicable.
- 9 (27) Provide for an undisturbed natural barrier:
- 10 (A) beginning at the elevation of the lowest coal seam to be
- 11 mined; and
- 12 (B) extending from the outslope for a distance determined by
- 13 the director;
- 14 to serve as a barrier to slides and erosion.
- 15 (28) Replace the water supply of an owner of interest in real
- 16 property who obtains all or part of the owner's supply of water for
- 17 domestic, agricultural, industrial, or other legitimate use from an
- 18 underground or a surface source if the supply is affected by
- 19 contamination, diminution, or interruption proximately resulting
- 20 from the surface coal mine operation. This article does not affect
- 21 the right of a person to enforce or protect under applicable law the
- 22 person's interest in water resources affected by a surface coal
- 23 mining operation.
- 24 (29) Meet other criteria that are necessary to achieve reclamation
- 25 in accordance with the purposes of this article, taking into
- 26 consideration the physical, climatological, and other
- 27 characteristics of the site.
- 28 SECTION 16. IC 14-34-10-2.5 IS ADDED TO THE INDIANA
- 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 30 [EFFECTIVE JULY 1, 1998]: **Sec. 2.5. The requirement in section**
- 31 **2(b)(19) of this chapter that reclamation efforts proceed as**
- 32 **contemporaneously as practicable with the surface coal mining**
- 33 **operations, unless an extension is approved by the director for**
- 34 **good cause, means the following as applied to reclamation activities**
- 35 **conducted under this article:**
- 36 (1) **For an area from which coal is removed or onto which**
- 37 **overburden is deposited, except boxcut and excess spoil, the**
- 38 **following:**
- 39 (A) **For an operation in which overburden is excavated and**
- 40 **deposited into spoil ridges by a dragline, shovel, or similar**
- 41 **excavating machine:**
- 42 (i) **backfilling and rough grading are complete not more**

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than one hundred eighty (180) days after deposition of spoil; and

(ii) not more than four (4) spoil ridges by length remain at any time.

(B) For an operation in which overburden is excavated from one (1) or more advancing pits, directly hauled back, dumped, and graded into an inactive pit as one (1) operation, rough backfilling and grading are carried out continuously behind the pit or pits being excavated, and not more than four (4) separate pits are open at any time.

(C) For an operation other than those described in clauses (A) and (B), backfilling and rough grading are completed not later than one hundred eighty (180) days after deposition of spoil and not more than four (4) spoil ridges by length remain at any time.

(2) For boxcut and excess spoil, rough grading is completed within one (1) year after deposition.

(3) For all other areas affected by surface coal mining operations, reclamation is completed in accordance with applicable time limits set forth in the approved reclamation plan.

SECTION 17. IC 14-34-5-6 IS REPEALED [EFFECTIVE JULY 1, 1998].

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