

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.63545 Designating areas unsuitable for surface coal mining; rules; determination; petition by interested person; public hearing; written decision; statement; certain surface coal mining operation prohibited; consultation.

Sec. 63545.

(1) The department shall promulgate rules establishing a process for designating areas unsuitable for surface coal mining. The rules shall include all of the following:

- (a) Surface coal mining land review.
- (b) Development of a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations.
- (c) Development, by rule, of a method for implementing land use planning decisions concerning surface coal mining operations.
- (d) Development, by rule, of proper notice provisions and opportunity for public participation, including a public hearing, prior to making any designation or redesignation pursuant to this section.
- (e) Procedures for determining whether an area proposed for surface coal mining contains historic resources. These rules shall be developed with the concurrence of the department of history, arts, and libraries and the department of natural resources.

(2) On a petition submitted pursuant to subsection (3), the department shall designate an area as unsuitable for all or certain types of surface coal mining operations if the department determines that reclamation pursuant to the requirements of this part is not technologically and economically feasible. A surface area may be designated unsuitable for certain types of surface coal mining operations if those operations do any of the following:

- (a) Are incompatible with existing state or local land use plans or programs.
- (b) Affect fragile land or historic resources resulting in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems.
- (c) Affect renewable resource land, including aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.
- (d) Affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, substantially endangering life and property.
- (e) Affect agricultural land by diminishing the productivity of the land after reclamation to less than the productivity before the site was mined.
- (f) Adversely affect an agricultural operation, including planting, harvesting, transportation, processing, or other activity included in the agricultural impact statement required by section 63516(1)(s).

(3) Determinations of the unsuitability of land for surface coal mining shall be integrated with present and future land use planning and regulation processes at the federal, state, and local levels. The requirements of this section do not apply to land on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to former 1982 PA 303, or where substantial legal and financial commitments in the operation or proposed operation were in existence prior to January 4, 1977.

(4) A person having an interest that is or may be adversely affected has the right to petition the department to have an area designated as unsuitable for surface coal mining operations or to have that designation terminated. The petition shall contain allegations of facts with supporting evidence. Within 30 days after receipt of the petition, the department shall hold a public hearing in the locality of the affected area. After a person having an interest that is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision with reasons for the decision. In the event that all the parties stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(5) Before designating land areas as unsuitable for surface coal mining operations, the department shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

(6) After October 12, 1982, and subject to valid existing rights, surface coal mining operations, except those that existed on August 3, 1977, shall not be permitted that do any of the following:

- (a) Adversely affect a publicly owned park or historic resource unless approved jointly by the department and the federal, state, or local agency with jurisdiction over the park or historic resource and by the department of history, arts, and libraries.
- (b) Are within 100 feet of the outside right-of-way line of a public road, except where mine access roads or haulage roads join the right-of-way lines and except that the department may permit these roads to be relocated or

the area affected to lie within 100 feet of the public road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.

(c) Are within 300 feet of an occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of any public building, school, church, community, or institutional building, or public park, or within 300 feet of a cemetery.

(7) The department shall designate areas protected by part 351 as unsuitable for surface coal mining.

(8) In administering this section, the department shall consult with the department of natural resources.

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