



AN ACT MODIFYING VEGETATIVE COVER OF WATER FACILITY STANDARDS FOR FINAL BOND RELEASE AT COAL AND URANIUM MINES; ELIMINATING THE CONTINGENT VOIDNESS SECTION RELATED TO FEDERAL APPROVAL OF MODIFICATIONS TO THE VEGETATIVE COVER STANDARDS; AMENDING SECTION 82-4-235, MCA; REPEALING SECTION 2, CHAPTER 72, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 82-4-235, MCA, is amended to read:

**"82-4-235. (Temporary) Determination of successful revegetation -- final bond release.** (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water management facilities and other support facilities include ~~but are not limited to~~ sedimentation ponds, diversions, other water management structures, soils stockpiles, and access roads, ~~segments of haul roads, and electrical substations.~~

(b) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise meets the reclamation standards in subsection (1).

(4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2). ~~(Void on occurrence of contingency--sec. 2, Ch. 72, L. 2009.)~~

~~**82-4-235. (Effective on occurrence of contingency) Determination of successful revegetation -- final bond release.** (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:~~

~~—— (a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;~~

~~—— (b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;~~

~~—— (c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;~~

~~—— (d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;~~

~~—— (e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and~~

~~—— (f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are~~

introduced species approved by the department as desirable and necessary to achieve the postmining land use.

~~———(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.~~

~~———(3) (a) Notwithstanding the provision in subsection (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:~~

~~———(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and~~

~~———(ii) at least one of the following conditions exists:~~

~~———(A) the standards of 82-4-233(1) are otherwise achieved;~~

~~———(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;~~

~~———(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or~~

~~———(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion:~~

~~———(b) On lands that meet the criteria described in subsection (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."~~

**Section 2. Repealer.** Section 2, Chapter 72, Laws of 2009, is repealed.

**Section 3. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 0037, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

HOUSE BILL NO. 37

INTRODUCED BY B. MCCHESENEY

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

AN ACT MODIFYING VEGETATIVE COVER OF WATER FACILITY STANDARDS FOR FINAL BOND RELEASE AT COAL AND URANIUM MINES; ELIMINATING THE CONTINGENT VOIDNESS SECTION RELATED TO FEDERAL APPROVAL OF MODIFICATIONS TO THE VEGETATIVE COVER STANDARDS; AMENDING SECTION 82-4-235, MCA; REPEALING SECTION 2, CHAPTER 72, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.