

**40-8-9 Evasion of chapter or orders -- Penalties -- Limitations of actions -- Violation of chapter or permit conditions -- Inspection -- Cessation order, abatement notice, or show cause order -- Suspension or revocation of permit -- Review -- Division enforcement authority -- Appeal provisions.**

- (1)
  - (a) A person, owner, or operator who willfully or knowingly evades this chapter, or who for the purpose of evading this chapter or any order issued under this chapter, willfully or knowingly makes or causes to be made any false entry in any report, record, account, or memorandum required by this chapter, or by the order, or who willfully or knowingly omits or causes to be omitted from a report, record, account, or memorandum, full, true, and correct entries as required by this chapter, or by the order, or who willfully or knowingly removes from this state or destroys, mutilates, alters, or falsifies any record, account, or memorandum, is guilty of a class B misdemeanor and, upon conviction, is subject to a fine of not more than \$10,000 for each violation.
  - (b) Each day of willful failure to comply with an emergency order is a separate violation.
- (2) No suit, action, or other proceeding based upon a violation of this chapter, or any rule or order issued under this chapter, may be commenced or maintained unless the suit, action, or proceeding is commenced within five years from the date of the alleged violation.
- (3)
  - (a) If, on the basis of information available, the division has reason to believe that a person is in violation of a requirement of this chapter or a permit condition required by this chapter, the division shall immediately order inspection of the mining operation at which the alleged violation is occurring, unless the information available to the division is a result of a previous inspection of the mining operation.
  - (b)
    - (i) If, on the basis of an inspection, the division determines that a condition or practice exists, or that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, and the condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall immediately order a cessation of mining and operations or the portion relevant to the condition, practice, or violation.
    - (ii) The cessation order shall remain in effect until the division determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the division.
    - (iii) If the division finds that the ordered cessation of mining operations, or a portion of the operation, will not completely abate the imminent danger to the health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the division shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the division considers necessary to abate the imminent danger or the significant environmental harm.
  - (c)
    - (i) If, on the basis of an inspection, the division determines that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall issue a notice to the permittee or his agent specifying a

reasonable time, but not more than 90 days, for the abatement of the violation and providing an opportunity for a conference with the division.

- (ii) If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and upon the written finding of the division, the division finds that the violation has not been abated, it shall immediately order a cessation of mining operations or the portion of the mining operation relevant to the violation.
  - (iii) The cessation order shall remain in effect until the division determines that the violation has been abated or until modified, vacated, or terminated by the division pursuant to this Subsection (3).
  - (iv) In the order of cessation issued by the division under this Subsection (3), the division shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.
- (d)
- (i) Notices and orders issued under this section shall set forth with reasonable specificity:
    - (A) the nature of the violation and the remedial action required;
    - (B) the period of time established for abatement; and
    - (C) a reasonable description of the portion of the mining and reclamation operation to which the notice or order applies.
  - (ii) Each notice or order issued under this section shall be given promptly to the permittee or his agent by the division, and the notices and orders shall be in writing and shall be signed by the director, or his authorized representative who issues notices or orders.
  - (iii) A notice or order issued under this section may be modified, vacated, or terminated by the division, but any notice or order issued under this section which requires cessation of mining by the operator shall expire within 30 days of the actual notice to the operator, unless a conference is held with the division.
- (4)
- (a) The division may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which the mining and reclamation operation is located, or in which the permittee of the operation has his principal office, if the permittee or his agent:
    - (i) violates or fails or refuses to comply with an order or decision issued by the division under this chapter;
    - (ii) interferes with, hinders, or delays the division, or its authorized representatives, in carrying out the provisions of this chapter;
    - (iii) refuses to admit the authorized representatives to the mine;
    - (iv) refuses to permit inspection of the mine by the authorized representative; or
    - (v) refuses to furnish any information or report requested by the division in furtherance of the provisions of this chapter.
  - (b)
    - (i) The court shall have jurisdiction to provide the appropriate relief.
    - (ii) Relief granted by the court to enforce an order under Subsection (4)(a)(i) shall continue in effect until the completion or final termination of all proceedings for review of that order under this chapter, unless, prior to this completion or termination, the district court granting the relief sets it aside or modifies the order.
- (5)
- (a)
    - (i) A permittee issued a notice or order by the division, pursuant to the provisions of Subsections (3)(b) and (3)(c), or a person having an interest which may be adversely

affected by the notice or order, may apply to the board for review of the notice or order within 30 days of receipt of the notice or order, or within 30 days of a modification, vacation, or termination of the notice or order.

- (ii) Upon receipt of this application, the board shall pursue an investigation as it considers appropriate.
  - (iii) The investigation shall provide an opportunity for a public hearing at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or that person to present information relating to the issuance and continuance of the notice or order of the modification, vacation, or termination of the notice or order.
  - (iv) The filing of an application for review under this Subsection (5)(a) shall not operate as a stay of an order or notice.
- (b)
- (i) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior to the hearing.
  - (ii) This hearing shall be of record and shall be subject to judicial review.
- (c)
- (i) Pending completion of the investigation and hearing required by this section, the applicant may file with the board a written request that the board grant temporary relief from any notice or order issued under this section, with a detailed statement giving the reasons for granting this relief.
  - (ii) The board shall issue an order or decision granting or denying this relief expeditiously.
- (d)
- (i) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to this section, the board shall hold a public hearing, after giving written notice of the time, place, and date of the hearing.
  - (ii) The hearing shall be of record and shall be subject to judicial review.
  - (iii) Within 60 days following the public hearing, the board shall issue and furnish to the permittee and all other parties to the hearing, a written decision, and the reasons for the decision, regarding suspension or revocation of the permit.
  - (iv) If the board revokes the permit, the permittee shall immediately cease mining operations on the permit area and shall complete reclamation within a period specified by the board, or the board shall declare the performance bonds forfeited for the operation.
- (e) Action by the board taken under this section or any other provision of the state program shall be subject to judicial review by the appropriate district court within the state.
- (6) A criminal proceeding for a violation of this chapter, or a regulation or order issued under this chapter, shall be commenced within five years from the date of the alleged violation.

Amended by Chapter 322, 2007 General Session