

## Chapter 8 Utah Mined Land Reclamation Act

### 40-8-1 Short title.

This act shall be known and may be cited as the "Utah Mined Land Reclamation Act."

Enacted by Chapter 130, 1975 General Session

### 40-8-2 Legislative findings.

The Utah Legislature finds that:

- (1) A mining industry is essential to the economic and physical well-being of the state of Utah and the nation.
- (2) It is necessary to alter the surface of the earth to extract minerals required by our society, but this should be done in such a way as to minimize undesirable effects on the surroundings.
- (3) Mined land should be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of the state and to provide for the subsequent use of the lands affected. Reclamation requirements must be adapted to the diversity of topographic, chemical, climatic, biologic, geologic, economic, and social conditions in the areas where mining takes place.

Enacted by Chapter 130, 1975 General Session

### 40-8-3 Purpose.

The purpose of this act is to provide that from the effective date of the act, except as otherwise provided in this act, all mining in the state shall include plans for reclamation of the land affected.

Enacted by Chapter 130, 1975 General Session

### 40-8-4 Definitions.

As used in this chapter:

- (1) "Adjudicative proceeding" means:
  - (a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or
  - (b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).
- (2) "Applicant" means a person who has filed a notice of intent to commence mining operations, or who has applied to the board for a review of a notice or order.
- (3)
  - (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to it, which has been approved under Section 40-8-13.
  - (b) An approved notice of intention is not required for small mining operations.
- (4) "Board" means the Board of Oil, Gas, and Mining.
- (5) "Conference" means an informal adjudicative proceeding conducted by the division or board.
- (6)
  - (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface, beneath

the surface, or in the waters of the land from which any product useful to man may be produced, extracted, or obtained or which is extracted by underground mining methods for underground storage.

- (b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, but includes oil shale and bituminous sands extracted by mining operations.
- (7) "Development" means the work performed in relation to a deposit following its discovery but prior to and in contemplation of production mining operations, aimed at, but not limited to, preparing the site for mining operations, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.
- (8) "Division" means the Division of Oil, Gas, and Mining.
- (9) "Emergency order" means an order issued by the board in accordance with the provisions of Title 63G, Chapter 4, Administrative Procedures Act.
- (10)
  - (a) "Exploration" means surface-disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist.
  - (b) "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes and digging pits or cuts; building of roads, and other access ways; and constructing and operating other facilities related to these activities.
- (11) "Hearing" means a formal adjudicative proceeding conducted by the board under its procedural rules.
- (12)
  - (a) "Imminent danger to the health and safety of the public" means the existence of a condition or practice, or a violation of a permit requirement or other requirement of this chapter in a mining operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated.
  - (b) A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.
- (13)
  - (a) "Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to:
    - (i) on-site private ways, roads, and railroads;
    - (ii) land excavations;
    - (iii) exploration sites;
    - (iv) drill sites or workings;
    - (v) refuse banks or spoil piles;
    - (vi) evaporation or settling ponds;
    - (vii) stockpiles;
    - (viii) leaching dumps;
    - (ix) placer areas;
    - (x) tailings ponds or dumps; and
    - (xi) work, parking, storage, or waste discharge areas, structures, and facilities.
  - (b) All lands shall be excluded from the provisions of Subsection (13)(a) that would:

- (i) be includable as land affected, but which have been reclaimed in accordance with an approved plan, as may be approved by the board; and
  - (ii) lands in which mining operations have ceased prior to July 1, 1977.
- (14)
- (a) "Mining operation" means activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.
  - (b) "Mining operation" does not include:
    - (i) the extraction of sand, gravel, and rock aggregate;
    - (ii) the extraction of oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;
    - (iii) the extraction of geothermal steam;
    - (iv) smelting or refining operations;
    - (v) off-site operations and transportation;
    - (vi) reconnaissance activities; or
    - (vii) activities which will not cause significant surface resource disturbance or involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes.
- (15) "Notice" means:
- (a) notice of intention, as defined in this chapter; or
  - (b) written information given to an operator by the division describing compliance conditions at a mining operation.
- (16) "Notice of intention" means a notice to commence mining operations, including revisions to the notice.
- (17) "Off-site" means the land areas that are outside of or beyond the on-site land.
- (18)
- (a) "On-site" means the surface lands on or under which surface or underground mining operations are conducted.
  - (b) A series of related properties under the control of a single operator, but separated by small parcels of land controlled by others, will be considered to be a single site unless an exception is made by the division.
- (19) "Operator" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mining operation or proposed mining operation.
- (20) "Order" means written information provided by the division or board to an operator or other parties, describing the compliance status of a permit or mining operation.
- (21) "Owner" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mineral deposit or the surface of lands employed in mining operations.
- (22) "Permit area" means the area of land indicated on the approved map submitted by the operator with the application or notice to conduct mining operations.
- (23) "Permit" means a permit or notice to conduct mining operations issued by the division.
- (24) "Permittee" means a person holding, or who is required by Utah law to hold, a valid permit or notice to conduct mining operations.
- (25) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.

- (26) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions.
- (27) "Small mining operations" means mining operations that disturb or will disturb 10 or less surface acres at any given time in an unincorporated area of a county or five or less surface acres at any given time in an incorporated area of a county.
- (28) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Amended by Chapter 231, 2011 General Session

**40-8-5 Authority to enforce chapter -- Coordination of procedures -- Department of Environmental Quality.**

- (1)
  - (a) The board and the division have jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.
  - (b) The delegation of authority to a state officer, board, division, commission, or agency to administer a law of this state relating to mined land reclamation is withdrawn and the authority is unqualifiedly conferred upon the board and division as provided in this chapter.
  - (c) Nothing in this chapter affects the right of a landowner, or a public agency having proprietary authority under other provisions of law, to administer lands within the state, to include conditions in a lease, license, bill of sale, deed, right-of-way, permit, contract, or other instrument, if the conditions are consistent with this chapter and the rules adopted under this chapter.
- (2)
  - (a) If federal or local laws or regulations require operators to comply with mined land reclamation procedures separate from those provided for in this chapter, the board and division shall make every effort to have its rules and procedures accepted by the other governing bodies as complying with their respective requirements.
  - (b) The provisions of Subsections (2)(a) and (d) are established to minimize the need for operators and prospective operators to comply with duplicative, overlapping, or conflicting requirements.
  - (c) Nothing in this chapter authorizes a political subdivision of the state to impose a condition or restriction on a mining operation located on state or federal land that is not imposed by a federal or state agency on the mining operation.
  - (d) An ordinance or regulation issued by a political subdivision of the state that is more restrictive than a permit issued under this chapter for a mining operation on state or federal land is unenforceable.
- (3) Nothing in this chapter is intended to abrogate or interfere with the powers or duties of the Department of Environmental Quality.

Amended by Chapter 182, 2011 General Session

**40-8-6 Board -- Powers, functions, and duties.**

In addition to those provided in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, the board has the following powers, functions, and duties:

- (1) To enact rules according to the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are reasonably necessary to carry out the purposes of this chapter.
- (2) To hold hearings and to issue orders or other appropriate instruments based upon the results of those hearings.
- (3) To issue emergency orders according to the requirements and provisions of Title 63G, Chapter 4, Administrative Procedures Act.
- (4) To do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.

Amended by Chapter 344, 2009 General Session

**40-8-7 Board and division -- Authority.**

- (1) The board and the division may require:
  - (a) that a notice of intention for all mining operations be filed with, and approved by, the division, before the mining operation commences or continues pursuant to Sections 40-8-13 and 40-8-23;
  - (b) the reclamation of lands affected by mining operations after the effective date of this chapter having due regard for innate differences in mineral deposits;
  - (c) for mining operations, including small mining operations, the furnishing and maintenance of reasonable surety to guarantee that the land affected is reclaimed according to approved plans consistent with on-site conditions;
  - (d) that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel as required under Section 40-8-13;
  - (e) that the operator pay legally determined public liability and property damage claims resulting from mining operations;
  - (f) that every operator who conducts mining operations in the state maintain suitable records and make periodic reports to the division as required under this chapter;
  - (g) that with respect to all mining operations, a notice of intention is filed with and, if required by this chapter, approved by the division before any such mining operations are commenced or continued pursuant to Section 40-8-23;
  - (h) the suspension of mining operations in an emergency situation;
  - (i) the payment of fixed, uniform, and nonescalating permit fees; or
  - (j) that mining operations be conducted to minimize or prevent hazards to public health and safety.
- (2) No rule established by the board with respect to mined land reclamation shall have retroactive effect on existing reclamation plans included as a part of an approved notice of intention to commence mining operations which was approved prior to the effective date of the rule.
- (3) The board may promulgate rules relating to the surety for mining operations in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

**40-8-8 Board authority to act -- Entry of order -- Confidential data.**

- (1) The board may:
  - (a) file a notice of agency action; or
  - (b) respond to a request for agency action initiated by an affected person.
- (2)

- (a) The board shall enter its order within 60 days after the hearing.
- (b) All orders entered by the board shall be:
  - (i) entered in books to be kept by the board for that purpose;
  - (ii) indexed; and
  - (iii) public records open for inspection at all times during reasonable office hours.
- (c) Confidential data disclosed under this chapter shall be protected and not become public records, except as provided in Section 40-8-13.

Amended by Chapter 388, 2009 General Session

**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

**40-8-9.1 Civil penalty for violation of chapter -- Informal conference -- Public hearing -- Contest of violation or amount of penalty -- Collection -- Criminal penalties -- Civil penalty for failure to correct violation -- Civil penalties.**

- (1)
  - (a)
    - (i) A permittee who violates a permit condition or other provision of this chapter, may be assessed a civil penalty by the division.
    - (ii) If the violation leads to the issuance of a cessation order under Section 40-8-9(3), the civil penalty shall be assessed.
  - (b)
    - (i) The penalty may not exceed \$5,000 for each violation.
    - (ii) Each day of a continuing violation may be considered to be a separate violation for purposes of the penalty assessments.
  - (c) In determining the amount of the penalty, consideration shall be given to:
    - (i) the permittee's history of previous violations at the particular mining operation;
    - (ii) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;
    - (iii) whether the permittee was negligent; and
    - (iv) the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation.
- (2)
  - (a) Within 30 days after the issuance of a notice or order charging that a violation of this chapter has occurred, the division shall inform the permittee of the proposed assessment.
  - (b) The person charged with the penalty shall then have 30 days to pay the proposed assessment in full, or request an informal conference with the division.
  - (c) The informal conference held by the division may address either the amount of the proposed assessment or the fact of the violation, or both.
  - (d) If the permittee who requested the informal conference and participated in the proceedings is not in agreement with the results of the informal conference, the permittee may, within 30 days of receipt of the decision made by the division in the informal conference, request a hearing before the board.
  - (e)
    - (i) Prior to any review of the proposed assessment or the fact of a violation by the board, and within 30 days of receipt of the decision made by the division in the informal conference, the permittee shall forward to the division the amount of the proposed assessment for placement in an escrow account.
    - (ii) If the permittee fails to forward the amount of the penalty to the division within 30 days of receipt of the results of the informal conference, the operator waives any opportunity for further review of the fact of the violation or to contest the amount of the civil penalty assessed for the violation.
    - (iii) If, through administrative or judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the division shall, within 30 days, remit the appropriate amount to the operator with interest accumulated.
- (3)
  - (a) A civil penalty assessed by the division shall be final only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing.

- (b) If a public hearing is held, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.
- (c) When appropriate, the board shall consolidate the hearings with other proceedings under Section 40-8-9.
- (d) A hearing under this section shall be of record and shall be conducted pursuant to board rules governing the proceedings.
- (e) If the person charged with a violation does not attend the public hearing, a civil penalty shall be assessed by the division after the division:
  - (i) has determined:
    - (A) that a violation did occur; and
    - (B) the amount of the penalty which is warranted; and
  - (ii) has issued an order requiring that the penalty be paid.
- (4) Civil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state.
- (5) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with an order issued under Section 40-8-9, or any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision under Subsection (3), shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.
- (6) Whenever a corporate permittee violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection (3), a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under Subsections (1) and (5).
- (7) Any person who knowingly makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or an order or decision issued by the board under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.
- (8)
  - (a) An operator who fails to correct a violation for which a notice or cessation order has been issued under Subsection 40-8-9(3)(b) within the period permitted for a correction of the violation shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.
  - (b) The period permitted for correction of a violation for which a notice of cessation order has been issued under Subsection 40-8-9(3)(b) may not end until:
    - (i) the entry of a final order by the board, in a review proceeding initiated by the operator, in which the board orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements; or
    - (ii) the entry of an order of the court, a review proceeding initiated by the operator, in which the court orders the suspension of the abatement requirements of the citation.
- (9) Money received by the state from civil penalties collected from actions resulting from this chapter shall be deposited into the division's Abandoned Mine Reclamation Fund as established under Section 40-10-25.1 and shall be used for the reclamation of mined land impacts not covered by reclamation bonds.

Enacted by Chapter 194, 2002 General Session

**40-8-10 Notice.**

Except as otherwise provided in this chapter, any notification required by this chapter shall be:

- (1) given by the board or division by personal service to individuals directly affected; and
  - (a) by one publication in a daily newspaper of general circulation in Salt Lake City, Utah; and
  - (b) in all newspapers of general circulation published in the county or counties in which the land affected is situated; and
- (2) by publication in accordance with Section 45-1-101.

Amended by Chapter 388, 2009 General Session

**40-8-11 Budget of administrative expenses -- Procedure -- Division authority to appoint or employ consultants.**

- (1) The division, with the approval of the board, shall prepare a budget of the administrative expenses in carrying out the provisions of this act for the fiscal year next following the convening of the Legislature. This budget shall be submitted to the executive director of the Department of Natural Resources for inclusion in the governor's appropriation request to the Legislature.
- (2) The division shall have authority to appoint or employ technical support or consultants in the pursuit of the objectives of this act and shall be responsible for coordination with other agencies in matters relating to mined land reclamation and the application of related laws.

Amended by Chapter 201, 1983 General Session

**40-8-12 Objectives.**

The objectives of mined land reclamation are:

- (1) to return the land, concurrently with mining or within a reasonable amount of time thereafter, to a stable ecological condition compatible with past, present, and probable future local land uses;
- (2) to minimize or prevent present and future on-site or off-site environmental degradation caused by mining operations to the ecologic and hydrologic regimes and to meet other pertinent state and federal regulations regarding air and water quality standards and health and safety criteria; and
- (3) to minimize or prevent future hazards to public safety and welfare.

Amended by Chapter 147, 1987 General Session

**40-8-12.5 Reclamation required.**

Every operator shall be obligated to conduct reclamation and shall be responsible for the costs and expenses thereof.

Enacted by Chapter 147, 1987 General Session

**40-8-13 Notice of intention required prior to mining operations -- Assurance of reclamation required in notice of intention -- When contents confidential -- Approval of notice of intention not required for small mining operations -- Procedure for reviewing notice of intention.**

- (1)
  - (a) Before any operator begins mining operations, or continues mining operations pursuant to Section 40-8-23, the operator shall file a notice of intention for each individual mining operation with the division.
  - (b) The notice of intention referred to in Subsection (1)(a) shall include:
    - (i) identification of all owners of any interest in a mineral deposit, including any ownership interest in surface land affected by the notice;
    - (ii) copies of underground and surface mine maps;
    - (iii) locations of drill holes;
    - (iv) accurate area maps of existing and proposed operations; and
    - (v) information regarding the amount of material extracted, moved, or proposed to be moved, relating to the mining operation.
  - (c) The notice of intention for small mining operations shall include a statement that the operator shall conduct reclamation as required by rules promulgated by the board.
  - (d) The notice of intention for mining operations, other than small mining operations, shall include a plan for reclamation of the lands affected as required by rules promulgated by the board.
- (2) The division may require that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel when no longer needed as part of the mining operation.
- (3) Information provided in the notice of intention, and its attachments relating to the location, size, or nature of the deposit that is marked confidential by the operator shall be protected as confidential information by the board and the division and is not a matter of public record unless the board or division obtains a written release from the operator, or until the mining operation has been terminated as provided in Subsection 40-8-21(2).
- (4)
  - (a) Within 30 days from the receipt of a notice of intention, the division shall complete its review of the notice and shall make further inquiries, inspections, or examinations that are necessary to properly evaluate the notice.
  - (b) The division shall notify the operator of any objections to the notice and shall grant the operator a reasonable opportunity to take action that may be required to remove the objections or obtain a ruling relative to the objections from the board.
- (5) Except for the form and amount of surety, an approval of a notice of intention for small mining operations is not required.
- (6) The notice of intention for mining operations other than small mining operations, shall be reviewed as provided in this Subsection (6).
  - (a) Within 30 days after receipt of a notice of intention or within 30 days following the last action of the operator or the division on the notice of intention, the division shall make a tentative decision to approve or disapprove the notice of intention.
  - (b) The division shall:
    - (i) mail the information relating to the land affected and the tentative decision to the operator; and
    - (ii) publish the information and the decision, in abbreviated form:
      - (A) one time only, in all newspapers of general circulation published in the county where the land affected is situated;
      - (B) in a daily newspaper of general circulation in Salt Lake City, Utah; and
      - (C) as required in Section 45-1-101.
  - (c) The division shall also mail a copy of the abbreviated information and tentative decision to the zoning authority of the county in which the land affected is situated and to the owner of record of the land affected.

- (d)
  - (i) Any person or agency aggrieved by the tentative decision may file a request for agency action with the division.
  - (ii) If no requests for agency action are received by the division within 30 days after the last date of publication, the tentative decision on the notice of intention is final and the division shall notify the operator.
  - (iii) If written objections of substance are received, the division shall hold an informal adjudicative proceeding.
- (e) This Subsection (6) does not apply to exploration.
- (7) Within 30 days after receipt of a notice of intention concerning exploration operations other than small mining operations, the division will review the notice of intention and approve or disapprove it.

Amended by Chapter 243, 2013 General Session

**40-8-14 Surety requirement -- Liability of small mining operations for failure to reclaim -- Forfeiture of surety.**

- (1)
  - (a) After receiving notification that a notice of intention for mining operations has been approved, but prior to commencement of those operations, the operator shall provide surety to the division, in a form and amount determined by the division or board as provided in this section.
  - (b) In determining the amount of surety under this section, the division may use the average cost of reclamation per acre.
  - (c) The board shall annually establish a figure representing the average cost of reclamation per acre after receiving a presentation from the division concerning the average cost of reclamation per acre and providing opportunity for public comment.
- (2)
  - (a) Except as provided in Subsection (3), the division shall approve the amount and form of surety.
  - (b) In determining the amount of surety to be provided, the division shall consider:
    - (i) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and
    - (ii) the nature, extent, and duration of operations under the approved notice.
  - (c) The division shall approve a fixed amount estimated to be required to complete reclamation at any point in time covered by the notice of intent.
  - (d)
    - (i) The division shall determine the amount of surety required for notices of intention, by using cost data from current large mining sureties.
    - (ii) The costs shall be adjusted to reflect the nature and scope of activities in the affirmative statement filed under Subsection 40-8-18(4).
  - (e)
    - (i) In determining the form of surety to be provided by the operator, the division shall approve a method acceptable to the operator consistent with the requirements of this chapter.
    - (ii) The form of surety that the operator may provide includes, but is not limited to, the following:
      - (A) collateral;
      - (B) a bond or other form of insured guarantee;
      - (C) deposited securities; or
      - (D) cash.

- (3)
  - (a) If the operator proposes reclamation surety in the form of a written contractual agreement, the board shall approve the form of surety.
  - (b) In making this decision, the board shall consider:
    - (i) the operator's:
      - (A) financial status;
      - (B) assets within the state;
      - (C) past performance in complying with contractual agreements; and
      - (D) facilities available to carry out the planned work;
    - (ii) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and
    - (iii) the nature, extent, and duration of operations under the approved notice.
  - (4) In determining the amount and form of surety to be provided under this section, consideration shall be given to similar requirements made on the operator by landowners, governmental agencies, or others, with the intent that surety requirements shall be coordinated and not duplicated.
  - (5) The liability under surety provisions shall continue until liability, in part, or in its entirety, is released by the division.
- (6)
  - (a) If the operator of a mining operation, including a small mining operation, fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited.
  - (b) With respect to the surety filed with the division, the board shall request the attorney general to take the necessary legal action to enforce and collect the amount of liability.
  - (c) If surety or a bond has been filed with the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or any agency of the federal government, the board shall certify a copy of the transcript of the hearing and transmit it to the agency together with a request that the necessary forfeiture action be taken.
  - (d) The forfeited surety shall be used only for the reclamation of the land to which it relates, and any residual amount returned to the rightful claimant.

Amended by Chapter 125, 2011 General Session

**40-8-15 Notice of commencement to division -- Operations and progress report.**

- (1) Within 30 days after commencement of mining operations under an approved notice of intention, the operator shall give notice of such commencement to the division.
- (2) At the end of each calendar year, unless waived by the division, each operator conducting mining operations under an approved notice of intention shall file an operations and progress report with the division on a form prescribed in the rules promulgated by the board.

Amended by Chapter 147, 1987 General Session

**40-8-16 Approved notice of intention valid for life of operation -- Withdrawal, withholding, or refusal of approval -- Procedure and basis.**

- (1) An approved notice of intention or approved revision of it remains valid for the life of the mining operation, as stated in it, unless the board withdraws the approval as provided in Subsection (2).

- (2) The board or the division shall not withdraw approval of a notice of intention or revision of it, except as follows:
  - (a) Approval may be withdrawn in the event that the operator substantially fails to perform reclamation or conduct mining operations so that the approved reclamation plan can be accomplished.
  - (b) Approval may be withdrawn in the event that the operator fails to provide and maintain surety as may be required under this chapter.
  - (c) Approval may be withdrawn in the event that mining operations are continuously shut down for a period in excess of five years, unless the extended period is accepted upon application of the operator.
- (3) Approval of a notice of intention may not be refused, withheld, nor withdrawn by the division until the operator, who holds or has applied for such approval, has had an opportunity to request a hearing before the board, present evidence, cross-examine, and participate fully in the proceedings. Based on the record of the hearing, the board will issue an order concerning the refusal, withholding, or withdrawal of the notice of intention. If no hearing is requested, the division may refuse, withhold, or withdraw approval of a notice of intention.
- (4) In the event that the division or the board withdraws approval of a notice of intention or its revision, all mining operations included under the notice shall be suspended in accordance with procedures and schedule approved by the division.

Amended by Chapter 22, 1989 General Session

**40-8-17 Responsibility of operator to comply with applicable rules, regulations and ordinances -- Inspections.**

- (1) The approval of a notice of intention shall not relieve the operator from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances, including but not limited to, those applying to safety, air and water pollution, and public liability and property damage.
- (2) As a condition of consideration and approval of a notice of intention, each applicant or operator under a notice of intention shall permit members of the board, the division, or other state agency having lawful interest in the administration of this act, to have the right, at all reasonable times, to enter the affected land and all related properties included in the notice of intention, whether or not approved, to make inspections for the purposes of this act.

Enacted by Chapter 130, 1975 General Session

**40-8-18 Notice of intention to revise operations -- Procedure.**

- (1)
  - (a) Since mining operations and related reclamation plans may need to be revised to accommodate changing conditions or new technology, an operator conducting mining operations under an approved notice of intention shall submit to the division a notice of intention when revising mining operations.
  - (b) The notice of intention to revise mining operations shall be submitted in the form required by the rules promulgated by the board.
- (2)
  - (a) The notice of intention to revise mining operations will be designated as an amendment to the existing notice of intention by the division, based on rules promulgated by the board.

- (b) An amendment of a notice of intention will be reviewed and considered for approval or disapproval by the division within 30 days of receipt of a notice of intention to revise mining operations.
- (3)
    - (a) A notice of intention to revise mining operations, if not designated as an amendment of a notice of intention as set forth in Subsection (2), shall be processed and considered for approval by the division in the same manner and within the same time period as an original notice of intention.
    - (b) The operator shall be authorized and bound by the requirements of the existing notice until the revision is acted upon and any revised surety requirements are established and satisfied.
  - (4)
    - (a) If a change in the operation occurs, a mining operation representative shall submit an amendment to the notice of intention.
    - (b) Although approval of an amendment to the notice of intention by small mining operations is not required, a revised surety shall be filed by the permittee prior to implementing the amended notice of intention.

Amended by Chapter 35, 2003 General Session

**40-8-19 Transfer of mining operation under approved notice of intention.**

Whenever an operator succeeds to the interest of another operator who holds an approved notice of intention or revision covering a mining operation, by sale, assignment, lease, or other means, the division may release the first operator from his responsibilities under his approved notice of intention, including surety, provided the successor assumes all of the duties of the former operator, to the satisfaction of the division, under this approved notice of intention, including its then approved reclamation plan and the posting of surety. Upon the satisfactory assumption of such responsibilities by the successor operator, under conditions approved by the division, the approved notice of intention shall be transferred to the successor operator.

Enacted by Chapter 130, 1975 General Session

**40-8-20 Applicability.**

This act shall apply to all lands in the state of Utah lawfully subject to its police power. No political subdivision of this state shall enact laws, regulations, or ordinances which are inconsistent with this act.

Enacted by Chapter 130, 1975 General Session

**40-8-21 Temporary suspension or termination of operations -- Notice to division -- Evaluation and inspection -- Release of surety -- Evidence of compliance.**

- (1) In the case of a temporary suspension of mining operations, excluding labor disputes, expected to be in excess of five years' duration, the operator shall, within 30 days, notify the division.
- (2) In the case of a termination of mining operations or a suspension of such operations expected to extend for a period in excess of two years, the operator shall furnish the division with such data as it may require in order to evaluate the status of the mining operation, performance under the reclamation plan, and the probable future status of the mineral deposit and condition of the land affected.

- (3) Upon receipt of notification of termination or extended suspension, the division shall, within 30 days, cause an inspection to be made of the property and take whatever action may be appropriate in furtherance of the purposes of this chapter.
- (4) The full release by the division of surety posted under an approved notice of intention shall be prima facie evidence that the operator has fully complied with the provisions of this chapter.

Amended by Chapter 147, 1987 General Session

**40-8-22 Division cooperation -- Agreements.**

- (1) The division shall cooperate with other state agencies, local governmental bodies, agencies of the federal government, and appropriate private interest in the furtherance of the purposes of this act.
- (2) The division is authorized to enter into cooperative agreements with these agencies, as may be approved by the board, in furtherance of the purposes of this act and may accept or commit funds in connection thereto as may be appropriated or otherwise provided for the purpose and as specifically approved by the board, except that such actions shall not result in any delegation of powers, responsibility, or authority conferred upon the board or division by this act.

Enacted by Chapter 130, 1975 General Session

**40-8-23 Effective dates -- Exceptions.**

This act shall become effective 60 days after adjournment of the Legislature except as follows:

- (1) Mining operations which are active on the effective date of this act will be required to prepare and submit a notice of intention on or before July 1, 1977, and shall be authorized to continue such existing operations until the operator obtains approval of his notice of intention. Such approval shall be obtained by the operator within 36 months from the date of submission of this notice. Subsequent to approval of the notice of intention, the operator shall be bound by the provisions of the approved notice of intention and surety requirements as provided in Sections 40-8-13 and 40-8-14.
- (2) Mining operations which are active on the effective date of this act and which are suspended or terminated on or before July 1, 1977, shall advise the division of this fact before July 10, 1977, and shall not be required to submit a notice of intention.
- (3) Mining operations which are inactive on the effective date of this act and which resume operations on or before July 1, 1977, shall be required to prepare and submit a notice of intention within 12 months following the effective date of this act or within six months of the resumption of such operations, whichever is earlier, and shall be authorized to conduct operations as described in the notice of intention until the operator obtains approval of his notice of intention. Such approval shall be obtained by the operator within 36 months from the date of submission of the notice. Subsequent to approval of the notice of intention the operator shall be bound by the provisions of the approved notice of intention and surety requirements as provided in Sections 40-8-13 and 40-8-14.
- (4) The board and division, in the initial application of this act and until July 1, 1977, shall not be bound by the 30 day time limitation within which to take action on a notice of intention; but all notices of intention filed before July 1, 1977, shall be acknowledged as received within 30 days of receipt and action shall be commenced by the division within 12 months from the date of receipt.

- (5) This act and the rules and regulations promulgated under it shall be fully effective for all operators and mining operations active on the effective date of this act or commenced or reactivated on and after July 1, 1977.

Amended by Chapter 20, 1995 General Session