

**ENVIRONMENTAL COMPLIANCE FOR
MINERALS REGULATORY PROGRAM**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Peter C. Knudson

This act modifies the Mines and Mining code to amend provisions relating to mined land reclamation. This act amends the definitional section, imposes a violations and civil penalties system in the minerals regulatory program and establishes a five-year statute of limitations for this program.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

40-8-4, as last amended by Chapter 147, Laws of Utah 1987

40-8-8, as last amended by Chapter 161, Laws of Utah 1987

40-8-9, as last amended by Chapter 161, Laws of Utah 1987

ENACTS:

40-8-9.1, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **40-8-4** is amended to read:

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.

[~~(1)~~] (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.

[~~(2)~~] (4) "Board" means the Board of Oil, Gas and Mining.

(5) "Conference" means an informal adjudicative proceeding conducted by the division or board.

[~~(3)~~] (6) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or [~~otherwise~~] 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.

[~~(4)~~] (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.

[~~(5)~~] (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 63, Chapter 46b, Administrative Procedures Act.

[~~(6)~~] (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.

~~(7)~~ (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: ~~(a)~~

(i) on-site private ways, roads, and railroads; ~~(b)~~

(ii) land excavations; ~~(c)~~

(iii) exploration sites; ~~(d)~~

(iv) drill sites or workings; ~~(e)~~

(v) refuse banks or spoil piles; ~~(f)~~

(vi) evaporation or settling ponds; ~~(g)~~

(vii) stockpiles; ~~(h)~~

(viii) leaching dumps; ~~(i)~~

(ix) placer areas; ~~(j)~~

(x) tailings ponds or dumps; and ~~(k)~~

(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 ~~otherwise~~:

(i) be includable as land affected, but which have been reclaimed in accordance with an

approved plan [~~or otherwise~~], as may be approved by the board[~~;~~]; and

(ii) lands in which mining operations have ceased prior to July 1, 1977.

~~[(8)]~~ (14) (a) "Mining operation" means [~~those~~] 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; [~~or~~]

(vi) reconnaissance activities [~~and~~]; 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.

~~[(9)]~~ (16) "Notice of intention" means a notice to commence mining operations, including revisions to the notice.

~~[(10)]~~ (17) "Off-site" means the land areas that are outside of or beyond the on-site land.

~~[(11)]~~ (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 [~~excepted~~] an exception is made by the division.

~~[(12)]~~ (19) "Operator" means ~~[any]~~ a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative ~~[of any kind]~~, 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.

~~[(13)]~~ (21) "Owner" means ~~[any]~~ a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative ~~[of any kind]~~, 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.

~~[(14)]~~ (26) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or ~~[otherwise]~~ treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions.

~~[(15)]~~ (27) "Small mining operations" means mining operations which disturb or will disturb five or less surface acres at any given time.

(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.

Section 2. Section **40-8-8** is amended to read:

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

- (1) The board may ~~[act by]~~:
 - (a) ~~[filing]~~ file a notice of agency action; or
 - (b) ~~[responding]~~ respond to a request for agency action initiated by ~~[any]~~ 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 Subsection 40-8-13(2).

~~[(3) (a) Whenever it appears that any person, owner, or operator is violating any provision of this chapter, or any rule or order made under the authority of this chapter, the board shall file a notice of agency action, and shall hold an adjudicative proceeding.]~~

~~[(b) All persons known to be affected by the violation, and the alleged violators, shall be given opportunity to be heard.]~~

~~[(c) If, following this hearing, the board finds a violation, it may:]~~

~~[(i) issue an abatement or compliance order; or]~~

~~[(ii) bring suit in the name of the state to restrain the violator from continuing the violation in any court in the state having jurisdiction in the county of residence of any defendant or in the county where the violation is alleged to have occurred.]~~

~~[(d) In that suit, the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions.]~~

~~[(e) Failure to comply with the terms of any injunction or order issued by the court is prima facie evidence of contempt and is punishable by the imposition of a penalty not to exceed \$1,000 per day for each day of contempt, in addition to any fine otherwise imposed for the violation of this chapter.]~~

~~[(4) If a suit is filed against an operator, and a preliminary injunction or temporary restraining order is issued that would result in an operator being ordered to close his mining~~

operation, the party instituting the lawsuit shall give security according to Rule 65A(c) of the Utah Rules of Civil Procedure.]

Section 3. Section **40-8-9** is amended to read:

40-8-9. Evasion of chapter or rules -- 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) ~~[Any]~~ A person, owner, or operator who willfully or knowingly evades this chapter, or who for the purpose of evading this chapter or any rule or 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 rule or order, or who willfully or knowingly omits or causes to be omitted from ~~[any]~~ a report, record, account, or memorandum, full, true, and correct entries as required by this chapter, or by the rule or 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 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 ~~[two]~~ 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 rule, regulation, or order issued under this chapter, shall be commenced within five years from the date of the alleged violation.

Section 4. Section **40-8-9.1** is enacted to read:

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) Monies 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.