

40-10-11 Division action on permit application -- Requirements for approval -- List of applicant's mining law violation -- Restoration of prime farmland.

- (1)
 - (a)
 - (i) After a complete mining application and reclamation plan or a revision or renewal of an application and plan is submitted to the division as required by this chapter and the public is notified and given an opportunity for a hearing as required by Section 40-10-13, the division shall grant, require modification of, or deny the permit application.
 - (ii) The division shall make its decision within a reasonable time set by the division and notify the applicant in writing.
 - (b) The applicant for a permit, or a revision of a permit shall have the burden of establishing that the application is in compliance with all requirements of this chapter.
 - (c) Within 10 days after the granting of a permit, the division shall provide to the local governmental officials in the local political subdivision in which the area of affected land is located:
 - (i) notification that a permit has been issued; and
 - (ii) a description of the location of the land.
- (2) No permit or revision application shall be approved unless the application affirmatively demonstrates and the division finds in writing on the basis of the information set forth in the application, or from information otherwise available which will be documented in the approval and made available to the applicant, that:
 - (a) the permit application is accurate and complete and that all requirements of this chapter have been complied with;
 - (b) the applicant has demonstrated that the reclamation requirements under this chapter can be accomplished under the reclamation plan contained in the permit application;
 - (c) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Subsection 40-10-10(2)(c) has been made by the division and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;
 - (d) the area proposed to be mined is not included within an area:
 - (i) designated as unsuitable for surface coal mining pursuant to Section 40-10-24; or
 - (ii) under study for this designation in an administrative proceeding commenced under Subsection 40-10-24(2), unless the operator demonstrates that prior to January 1, 1977, substantial legal and financial commitments were made to the operation;
 - (e) the proposed surface coal mining operation would not:
 - (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated other than on:
 - (A) undeveloped range lands that are not significant to farming on alluvial valley floors; or
 - (B) lands which the division finds are of such small acreage that if farming is interrupted, discontinued, or precluded, the impact on the farm's agricultural production will be negligible; or
 - (ii) materially damage the quantity or quality of water in surface or underground water systems that supply alluvial valley floors specified in Subsection (2)(e)(i), but this Subsection (2)(e) shall not affect those surface coal mining operations which in the year preceding August 3, 1977, produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the division to conduct surface coal mining operations within these alluvial valley floors; and

- (f) if the private mineral estate has been severed from the private surface estate, the applicant has submitted to the division:
 - (i) the written consent of the surface owner to the extraction of coal by surface mining methods provided that nothing in this Subsection (2) shall be construed to:
 - (A) increase or diminish any property right established under the laws of the state; or
 - (B) authorize the board or division to adjudicate property right disputes;
 - (ii) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
 - (iii) documentation consistent with state law that establishes the status of the surface-subsurface legal relationship.
- (3)
 - (a)
 - (i) The applicant shall file with the permit application a list of any notices of violations of the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations, this chapter, any state or federal program or law approved under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., and any law, rule, or regulation of the United States, State of Utah, or any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application.
 - (ii) The list required in Subsection (3)(a)(i) shall also indicate the final resolution of any notice of violation.
 - (b) If the list or other information available to the division indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or other laws and regulations referred to in this Subsection (3), the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the division, department, or agency which has jurisdiction over the violation.
 - (c) No permit shall be issued to an applicant after a finding by the board, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter, the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., the implementing federal regulations, any state or federal programs enacted under the Surface Mining Control and Reclamation Act, or other provisions of the approved Utah program of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter.
- (4)
 - (a)
 - (i) In addition to finding the application in compliance with Subsection (2), if the area proposed to be mined contains prime farmland pursuant to division rules, the division shall grant a permit to mine on prime farmland if the division finds in writing that the operator has the technological capability to restore the mined area within a reasonable time to an equivalent or higher level of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards specified in division rules.
 - (ii) Except for compliance with Subsection (2), the requirements of this subsection shall apply to all permits issued after August 3, 1977.

- (b) This Subsection (4) shall not apply to any permit issued prior to August 3, 1977, or to any revisions or renewals of the permit, or to any existing surface mining operations for which a permit was issued prior to August 3, 1977.
- (5)
- (a) After October 24, 1992, the prohibition of Subsection (3) shall not apply to a permit application if the violation resulted from an unanticipated event or condition that occurred at a surface coal mining operation on lands eligible for remining under a permit held by the person making the application.
 - (b) As used in this Subsection (5), the term "violation" has the same meaning as the term has under Subsection (3).

Amended by Chapter 309, 2009 General Session