

**40-10-22 Violation of chapter or permit conditions -- Inspection -- Cessation order, abatement notice, or show cause order -- Suspension or revocation of permit -- Review -- Costs assessed against either party.**

- (1)
- (a) Whenever, on the basis of any information available, including receipt of information from any person, the division has reason to believe that any person is in violation of any requirement of this chapter or any permit condition required by this chapter, the division shall immediately order inspection of the surface coal 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 surface coal mining operation. When the inspection results from information provided to the division by any person, the division shall notify that person when the inspection is proposed to be carried out, and that person shall be allowed to accompany the inspector during the inspection.
  - (b) When, on the basis of any inspection, the division determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, which 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 surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. 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 pursuant to Subsection (1)(e). Where the division finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of same, will not completely abate the imminent danger to 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 deems necessary to abate the imminent danger or the significant environmental harm.
  - (c) When, on the basis of an inspection, the division determines that any permittee is in violation of any requirement of this chapter or any 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 fixing a reasonable time but not more than 90 days for the abatement of the violation and providing opportunity for conference before the division. 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 surface coal mining and reclamation operations or the portion of same relevant to the violation. 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 Subsection (1)(e). In the order of cessation issued by the division under this subsection, 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) When on the basis of an inspection the division determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the division also finds that these violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any

permit conditions or that these violations are willfully caused by the permittee, the division shall initiate agency action by requesting the board to issue an order to show cause to the permittee as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the board shall give notice in accordance with the rules of practice and procedure of the board. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the board shall immediately enter an order to suspend or revoke the permit.

- (e) Notices and orders issued under this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. 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 such notice or order. Any 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 actual notice to the operator unless a conference is held before the division.
- (2)
- (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 surface coal mining and reclamation operation is located or in which the permittee of the operation has his principal office, whenever such permittee or his agent:
- (i) violates or fails or refuses to comply with any order or decision issued 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;
  - (v) refuses to furnish any information or report requested by the division in furtherance of the provisions of this chapter; or
  - (vi) refuses to permit access to and copying of such records as the division determines necessary in carrying out the provisions of this chapter.
- (b) The district court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the district court to enforce an order under Subsection (2)(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 Utah Supreme Court on review grants a stay of enforcement or sets aside or modifies the board's order which is being appealed.
- (3)
- (a) A permittee issued a notice or order by the division pursuant to the provisions of Subsections (1)(b) and (1)(c), or any person having an interest which may be adversely affected by the notice or order, may initiate board action by requesting a hearing for review of the notice or order within 30 days of receipt of it or within 30 days of its modification, vacation, or termination. Upon receipt of this application, the board shall cause such investigation to be made as it deems appropriate. 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 or the modification, vacation, or termination

of it. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

- (b) The permittee and other interested persons shall be given written notice of the time and place of the hearing in accordance with the rules of practice and procedure of the board, but the notice may not be less than five days prior to the hearing. This hearing shall be of record and shall be subject to judicial review.
- (c) 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, together with a detailed statement giving the reasons for granting this relief. The board shall issue an order or decision granting or denying this relief expeditiously; and where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to Subsections (1)(b) or (1)(c), the order or decision on this request shall be issued within five days of its receipt. The board may grant the relief under such conditions as it may prescribe, if a hearing has been held in the locality of the permit area on the request for temporary relief and the conditions of Subsections 40-10-14(4)(a), 40-10-14(4)(b), and 40-10-14(4)(c) are met.
- (d) 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 notice in accordance with the rules of practice and procedure of the board. Within 60 days following the hearing, the board shall issue and furnish to the permittee and all other parties to the hearing an order containing the basis for its decision on the suspension or revocation of the permit. If the board revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the board, or the board shall declare as forfeited the performance bonds for the operation.
- (e) Whenever an order is entered under this section or as a result of any adjudicative proceeding under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the board to have been reasonably incurred by that person in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the board, resulting from adjudicative proceedings, deems proper.
- (f) Action by the board taken under this section or any other provision of the state program shall be subject to judicial review by the Utah Supreme Court as prescribed in Section 78A-3-102, but the availability of this review shall not be construed to limit the operation of the citizen suit in Section 40-10-21, except as provided in this latter section.

Amended by Chapter 3, 2008 General Session