

**RECLAMATION SURETY FOR MINING
OPERATIONS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Dmitrich

This act modifies the Mines and Mining Code to provide that a reclamation surety be posted for all small mining operations and exploration projects. This act makes technical amendments.

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

AMENDS:

40-8-7, as last amended by Chapter 147, Laws of Utah 1987

40-8-13, as last amended by Chapters 147 and 161, Laws of Utah 1987

40-8-14, as last amended by Chapter 190, Laws of Utah 1998

40-8-18, as last amended by Chapter 147, Laws of Utah 1987

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

Section 1. Section **40-8-7** is amended to read:

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

(1) The board and the division may require:

~~[(a) identification of the ownership of all interests in mineral deposits, included within a notice of intention, including surface ownership of all land affected in the notice;]~~

~~[(b) the making and filing, with the division, of true and correct copies of underground and surface mine maps; drill hole locations; area maps of existing and proposed operations; and information relating to volumes of materials moved or proposed to be moved or extracted, which are related to mined land reclamation;]~~

~~[(c) the plugging or capping of drill holes and the closing of shafts and tunnels, made in mining operations after those facilities have served their intended purposes;]~~

(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;

~~[(d)]~~ (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;

~~[(e)]~~ (c) for mining operations ~~[other than]~~, including small mining operations, the furnishing and maintenance of reasonable surety to guarantee that the ~~[performance of the duty to reclaim the]~~ land affected ~~[in accordance with]~~ is reclaimed according to approved plans ~~[based upon]~~ consistent with on-site conditions; ~~[to treat]~~

(d) that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel as ~~[may be]~~ required~~;~~ and to under Section 40-8-13;

(e) that the operator pay legally determined public liability and property damage claims resulting from mining operations~~[- The board shall promulgate rules concerning surety for mining operations];~~

(f) that every operator who conducts mining operations in the state maintain suitable records and make periodic reports to the division ~~[in furtherance of the purposes of]~~ 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 ~~[case of]~~ an emergency ~~[conditions;]~~ situation;

(i) the payment of fixed, uniform, and nonescalating permit fees; or

(j) that mining operations be conducted ~~[so as]~~ 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 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 2. Section **40-8-13** is amended to read:

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, ~~he~~ 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.

~~(b)~~ (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.

~~(c)~~ (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.

~~(2)~~ (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).

~~(3)~~ (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.

~~[(4) Approval]~~ (5) Except for the form and amount of surety, an approval of a notice of intention for small mining operations is not required.

~~[(5)]~~ (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, one time only, in all newspapers of general circulation published in the county where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

(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 a formal adjudicative proceeding.

(e) This Subsection [~~(5)~~] (6) does not apply to exploration.

[~~(6)~~] (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.

Section 3. Section **40-8-14** is amended to read:

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

(1) After receiving notification that a notice of intention for mining operations [~~other than small 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.

(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 [~~to an acceptable standard~~].

(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).

[~~(d)~~] (e) 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. The form of surety that the operator may provide includes, but is not limited to, the following:

(i) collateral;

- (ii) a bond or other form of insured guarantee;
- (iii) deposited securities; or
- (iv) 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) If the operator of a small mining operation fails or refuses to carry out the necessary land reclamation as required by this chapter and the rules of the board, the board, after notice and hearing, may order that:]~~

~~[(a) reclamation be conducted by the division; and]~~

~~[(b) the costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court.]~~

~~[(7)]~~ (6) (a) If the operator of a mining operation ~~[other than]~~, 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.

Section 4. Section **40-8-18** is amended to read:

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

(1) (a) [~~In recognition that~~] Since mining operations and related reclamation plans may [~~require revision to fit~~] need to be revised to accommodate changing conditions or [~~developing~~] new technology, an operator [~~who is~~] conducting mining operations under an approved notice of intention shall submit to the division a notice of intention when revising mining operations. [~~This~~]

(b) The notice of intention to revise mining operations shall be submitted in the form [~~provided for in~~] 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 [~~40-8-18~~](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 ~~[his]~~ the existing notice until the revision is acted upon and any revised surety requirements are established and satisfied.

(4) (a) ~~[Small]~~ If a change in the operation occurs, a mining [operations] operation representative shall submit an amendment to the notice of intention [when changes in the operations occur].

(b) ~~[Approval]~~ Although approval of an amendment [of] 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.