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(3) If, after a hearing, the board finds the payment of proceeds delay is without reasonable justification, it may order a complete accounting and require the proceeds to be paid into an interest bearing escrow account and set a date for final distribution.

History: C. 1953, 40-6-18, enacted by L. 1975, ch. 129, § 1; L. 1979, ch. 146, § 1.

Compiler's Notes.

The 1979 amendment rewrote subsec. (1) which read: "Any royalty, overriding royalty, or working interest owner who has not received his share of the proceeds from the sale of production from a well in which he has an interest may file a petition with the board of oil and gas conservation to conduct a hearing to determine why the proceeds have not been paid"; substituted references to proceeds for references to royalty or interest in subsecs. (2) and (3); and made minor changes in style.

Title of Act.

An act enacting sections 40-6-18 and 40-6-19, Utah Code Annotated 1953; relating to the oil and gas conservation board; providing authority for the board to enter into certain co-operative agreements for research and development; and providing authority for the board to conduct hearings to determine why certain royalty payments have not been paid and to order their payment. — Laws 1975, ch. 129.

Effective Date.

Section 2 of Laws 1979, ch. 146 provided: "This act shall take effect on July 1, 1979."

40-6-19. Co-operative agreements authorized. The board and division of oil and gas conservation are authorized to enter into co-operative agreements with the national, state or local governments, and with independent organizations and institutions for the purpose of carrying out research and development experiments involving energy resources to the extent that the project is funded or partially funded and approved by the legislature.

History: C. 1953, 40-6-19, enacted by L. 1975, ch. 129, § 2.

CHAPTER 7

OIL AND GAS COMPACT

Section

- 40-7-1. Interstate compact to conserve oil and gas — Authority for governor to join.
 40-7-2. Authority for governor to execute extensions or withdraw from compact.
 40-7-3. Official representative — Assistant representative.

40-7-1. Interstate compact to conserve oil and gas — Authority for governor to join. The governor of the state of Utah is authorized and directed, for and in the name of the state of Utah to join with the other states in the Interstate Oil Compact to Conserve Oil and Gas, which was executed in Dallas, Texas, on the 16th day of February, 1935, and has been extended to the 1st day of September, 1959, with the consent of Congress, and that said compact and all extensions are now on deposit with the department of state of the United States.

History: L. 1957, ch. 131, § 1.

Compiler's Notes.

The original Interstate Compact to Conserve Oil and Gas, which was to expire Sep-

tember 1, 1937, was extended from time to time by the various states with the approval of Congress. The latest extension by Con-

gress was to September 1, 1971 and has been permitted to expire.

States which originally ratified the compact were: Oklahoma, Texas, New Mexico, Colorado, Illinois, Michigan, California, Arkansas, and Kansas. States which subsequently ratified are: Alabama, Alaska, Arizona, Florida, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Montana, Nebraska, Nevada, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, West Virginia, and Wyoming.

Title of Act.

An act authorizing and directing the governor of the state of Utah, for and in the name of Utah, to join with the other states in the interstate oil compact to conserve oil and gas. — Laws 1957, ch. 131.

Cross-References.

Oil and gas conservation generally, 40-6-1 et seq.

Collateral References.

38 AmJur 2d 638, Gas and Oil § 158; 72 AmJur 2d 410, States, Territories, and Dependencies § 5.

Mines, validity of statute restricting the right of mining so as not to interfere with surface, 28 ALR 1330.

Natural resources, constitutionality of statute limiting or controlling exploitation or waste, 24 ALR 834.

Oil or gas, statute or ordinance limiting rights of surface owner in respect of, 67 ALR 1346, 99 ALR 1119.

Petroleum production, constitutionality of statute regulating, 86 ALR 418.

Validity of prohibition or regulation of removal or exploitation of oil, minerals, soil, or other natural products within municipal limits, 10 ALR 3d 1226.

Validity, under police power, of compulsory pooling or unitization statute requiring owner or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 ALR 2d 436.

40-7-2. Authority for governor to execute extensions or withdraw from compact. The governor of the state of Utah is authorized and empowered, for and in the name of the state of Utah to execute agreements for further extension of the expiration date of said compact to conserve oil and gas, and to determine if and when it shall be to the best interest of the state of Utah to withdraw from said compact upon sixty days' notice as provided by its terms. In the event that he shall determine that the state shall withdraw from said compact he shall have the power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Utah from said compact.

History: L. 1957, ch. 131, § 2.

40-7-3. Official representative — Assistant representative. The governor shall be the official representative of the state of Utah on the "interstate oil compact commission" provided for in the compact to conserve oil and gas, and shall exercise and perform for the state all of the powers and duties as members of the interstate oil compact commission; provided, however, that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state of Utah as a member of said commission.

History: L. 1957, ch. 131, § 3.

CHAPTER 8

MINED LAND RECLAMATION

Section
40-8-1. Citation.

- 40-8-2. Legislative finding.
- 40-8-3. Purpose.
- 40-8-4. Definitions.
- 40-8-5. Board and division of oil, gas, and mining — Authority — Department of the
- 40-8-6. Board — Powers, functions and duties.
- 40-8-7. Board and division — Authority — No retroactive effect for rules or regulations
- 40-8-8. Board authority to act — Hearing, notice, order and finding — Public records
Confidential data — Motion for reconsideration — Powers and court jurisdiction
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- 40-8-10. Notice and procedure.
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- 40-8-12. Objectives.
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Division review and decision.
- 40-8-14. Surety required prior to operations — Procedure — Failure to carry out — Forfeiture
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- 40-8-16. Approved notice of intention valid for life of operation — Withdrawal of approval
— Procedure and basis.
- 40-8-17. Responsibility of operator to comply with applicable rules, regulations and
penalties — Inspections.
- 40-8-18. Revised notice of intention authorized — Procedure.
- 40-8-19. Approved notice of intention — Transfer to successor operator — Procedure.
- 40-8-20. Applicability.
- 40-8-21. Temporary suspension or termination of operations — Notice to division — Division
action and inspection — Release of surety.
- 40-8-22. Division co-operation — Agreements.
- 40-8-23. Effective dates — Exceptions.

40-8-1. Citation. This act shall be known and may be cited as the
"Utah Mined Land Reclamation Act."

History: L. 1975, ch. 130, § 1.

Title of Act.

An act amending section 40-6-3, Utah Code Annotated 1953, as repealed and re-enacted by chapter 176, Laws of Utah 1967, sections 40-6-15 and 40-6-16, Utah Code Annotated 1953, as enacted by chapter 176, Laws of Utah 1967, as amended by chapter 198, Laws of Utah 1969; relating to mining and reclamation of mined lands; changing the board and division of oil and gas conservation to the board and division of oil, gas, and mining; prescribing the functions, powers, and duties of the board and division not provided in chapter 6, Title 40, Utah Code Annotated 1953; providing for the reclamation of

mined lands under the board and the division and the procedures to effectuate this act; prescribing methods of enforcement and penalties; and providing for manner in which this act shall become effective. — Laws of Utah, ch. 130.

Cross-References.

Application of act to coal mining and reclamation provisions, 40-10-4.

Collateral References.

54 AmJur 2d 351, Mines and Mining, § 172.

Validity and construction of statutes relating strip mining, 86 ALR 3d 27.

40-8-2. Legislative finding. The Utah legislature finds that:

- (1) A mining industry is essential to the economic and physical 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.

History: L. 1975, ch. 130, § 2.

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.

History: L. 1975, ch. 130, § 3.

40-8-4. Definitions. As used in this act:

(1) "Board" means the board of oil, gas, and mining.
(2) "Division" means the division of oil, gas, and mining.
(3) "Deposit" means a natural accumulation of mineral matter in the form of consolidated rock or unconsolidated material, chemical, or organic materials, commingled, in solution 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. "Deposit" excludes water, geothermal steam, and oil and gas as defined in chapter 6 of Title 40, but shall include oil shale and bituminous sands extracted by mining operations.

(4) "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: on-site private ways, roads, and railroad lines appurtenant to any such area; land excavations; exploration sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; leaching dumps; placer areas; tailings ponds or dumps; work, parking, storage, or waste discharge areas; areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from or are used in such operations, are situated. All lands shall be excluded that would otherwise be includible as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the board, and lands in which mining operations have ceased prior to July 1, 1977.

(5) "Operator" means any 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, including exploring for or developing of a mineral deposit.

(6) "Mining operation(s)" means those activities conducted on the surface of the land for the exploration for, development of, or the extraction

of a mineral deposit from its natural occurrences, including, but not limited to, surface mining and the surface effects of underground and in situ mining, including on-site transportation, concentrating, milling, evaporation, and other primary processing. It does not include: the extraction of hydrocarbons in a liquid or gaseous state by means of wells or pipe; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; or any operations which would otherwise be included under mining operations but as to which less than 500 tons of material are mined in a period of twelve consecutive months or where less than two acres of land are excavated or used as a disposal site in a period of twelve consecutive months.

(7) "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.

(8) "On-site" means the surface land area within which mining operations are or will be conducted under a notice of intention to commence mining operations and which is bounded by continuous property lines defining surface land ownership, control, or right that is vested in the operator. 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 a single site unless excepted by the division.

(9) "Off-site" means the land areas that are outside of or beyond the on-site land which is owned or controlled by the operator.

(10) "Notice of intention" means a notice of intention to commence mining operations, including revisions to the notice.

(11) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to it, which has been approved under this act.

(12) "Exploration" means the act of searching for in investigating a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to exist. "Exploration" includes, but is not limited to: aerial and ground surveys; sinking shafts; tunneling; drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development or production mining operations; and the building of roads, access ways, and other facilities related to such work. "Exploration" does not include reconnaissance activities where power machinery, power tools, or explosives are not used.

(13) "Development" means the work performed in relation to a deposit following its discovery but prior to 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 activities related to same.

(14) "Emergency" means a condition, occurrence, or accident, directly or indirectly attributable to mining operations and taking place on-site or off-site, which constitutes an imminent danger to the health or safety of persons or property.

(15) "Emergency order" means an order, issued by the board, with or without hearing, which may require the operator to curtail or suspend mining operations because of an emergency, and, in addition, to promptly undertake to abate hazards to health or safety of persons or property, which have been caused by these mining operations.

(16) "Owner" means any 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 as land affected.

History: L. 1975, ch. 130, § 4.

40-8-5. Board and division of oil, gas, and mining — Authority — Department of health. (1) The board and the division shall have jurisdiction and authority over all persons and property, both public and private, necessary to enforce the provisions of this act. Any delegation of authority to any other state officer, board, division, commission, or agency to administer any or all other laws of this state relating to mined land reclamation is hereby rescinded and withdrawn; and such authority is hereby unqualifiedly conferred upon the board and division as provided in this act. Nothing in this act, however, shall affect in any way the right of the landowner or the board of state lands or other agency having proprietary authority, under other provisions of law to administer lands within the state, to include in any lease, license, bill of sale, deed, right of way, permit, contract, or other instrument, such conditions as may be appropriate, provided that such conditions are not inconsistent with this act and the rules and regulations adopted under it.

(2) In furtherance of the purposes of this act, where federal or local laws or regulations require operators to comply with mined land reclamation procedures separate from those provided for in this act, the board and division will make every effort to have its rules, regulations, and procedures accepted by such other governing bodies as complying with their respective requirements. The objective in such co-ordination will be to minimize the need for operators and prospective operators to undertake duplicatory, overlapping, or conflicting compliance procedures.

(3) Nothing in this act is intended to abrogate or interfere with any powers or duties of the state department of health.

History: C. 1953, 40-8-5, enacted by L. 1981, ch. 126, § 41.

Compiler's Notes.
Laws 1981, ch. 126, § 41 repealed old section 40-8-5 (L. 1975, ch. 130, § 6), relating to authority of the board and division of oil,

gas, and mining, and enacted new section 40-8-5.

Cross-References.

Powers, duties, and functions of board and division under coal mining and reclamation provisions, 40-10-6.

40-8-6. Board — Powers, functions and duties. (1) In addition to those provided in chapter 6 of Title 40, the board shall have the following powers, functions, and duties:

(a) To make and promulgate in accordance with the Utah Administrative Rule-making Act (chapter 46 of Title 63) such rules and regulations as may reasonably be necessary to carry out the purposes of this act.

(b) To hold hearings as provided in this act and to issue orders or other appropriate instruments based upon the results of these hearings.

(c) To issue emergency orders without notification when the board or the division finds that an emergency exists which requires immediate action, which order shall be effective upon issuance; but no emergency order shall remain effective for more than fifteen days nor be reissued or extended for more than an additional fifteen days without a hearing.

(d) To do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.

History: L. 1975, ch. 130, § 7.

40-8-7. Board and division — Authority — No retroactive effect for rules or regulations. (1) The board and the division shall have the authority to require:

(a) Identification of the ownership of all interests in mineral deposits included within a notice of intent, including surface ownership of all land affected in such notice.

(b) The making and filing, with the division, of true and correct copies of mine maps, underground and surface; 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, as may be 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 such facilities have served their intended purposes.

(d) The reclamation of lands affected by mining operations after the effective date of this act having due regard for innate differences in mineral deposits.

(e) The furnishing and maintenance of reasonable surety to guarantee the performance of the duty to reclaim the land affected in accordance with approved plans based upon on-site conditions; to treat each drill hole, shaft, or tunnel as may be required; and to pay legally determined public liability and property damage claims resulting from mining operations.

(f) That every operator who conducts mining operations under an approved notice of intent in the state maintain suitable records and make

periodic reports to the division as may be required in furtherance of the purposes of this act.

(g) That with respect to all mining operations a notice of intention, including reclamation plans prepared in accordance with this act, be filed with and 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 emergency conditions.

(i) The payment of fixed, uniform, nonescalating permit fees.

(2) No rule or regulations 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 or regulation.

History: L. 1975, ch. 130, § 8.

40-8-8. Board authority to act — Hearing, notice, order and finding — Public record — Confidential data — Motion for reconsideration — Powers and court jurisdiction — Violations — Failure of board to act. (1) The board may act upon its own motion or upon the petition of any affected person. On the filing of a petition for a hearing concerning any matter within the jurisdiction of the board, it shall promptly fix a date for a hearing and shall cause notification of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The board shall enter its order within sixty days after the hearing. All orders so entered by the board shall include or be based upon written findings of fact, which orders and findings of fact shall be entered in books to be kept by the board for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Confidential data disclosed under this act shall be protected and not become public records except as provided in subsection (2) of section 40-8-13. Any person affected by an order of the board shall have the right at any time to file a motion for reconsideration, stating the reason for the motion.

(2) The board shall have the power to summon witnesses, administer oaths, and require the production of pertinent records, books, and documents for examination at any hearing or investigation conducted by it in connection with the administration of this act.

(3) In case of failure or refusal on the part of any person or operator to comply with a subpoena issued by the board, or in the case of refusal of any witness to testify as to any matter regarding which he may be interrogated, any court having jurisdiction, upon the application of the board, may compel him to comply with the subpoena, and to attend before the board and produce such records, books, and documents as may be pertinent for examination, and to give his testimony. This court shall have the power

to punish for contempt as in the case of disobedience to a like subpoena issued by the court or for refusal to testify therein.

(4) Whenever it shall appear that any person, owner, or operator is violating any provision of this act, or any rule, regulation, or order made under this act, the board shall call a hearing to review the facts in case. All persons known to be affected and the alleged violators shall be given opportunity to be heard. If, following this hearing, the board finds a violation, it may issue an abatement or compliance order, or, at its election bring suit in the name of the state against such person or operator 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, to restrain such person or operator from continuing the violation. In such suit the court may grant injunctions, prohibitory and mandamus, including temporary restraining orders and temporary injunctions which are subject to appeal. Failure to comply with the terms of any injunction or order issued by the court shall be prima facie evidence of contempt which shall be 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 act.

(5) In the event the board shall fail to take action in any violation of this act, or of any rule, regulation, or order made under it, then any person or party in interest adversely affected and who has, thirty days or more previously, notified the board in writing of such violation and has requested the board to take action to prevent any or further violation, may bring suit for that purpose in any court having jurisdiction in any county in which the board could have brought suit. If in such suit the court holds that permanent injunctive relief should be granted, then the board shall be made a party and shall be substituted for the person who brought the suit, and the permanent injunction shall be issued as if the board had at all times been the complaining party.

(6) In the event that a suit is filed against an operator under subsections (4) or (5) and a preliminary injunction or temporary restraining order is issued, which would result in an operator being ordered to close his mining operation, the party instituting the lawsuit shall give security in accordance with Rule 65A(c) of the Utah Rules of Civil Procedure.

History: L. 1975, ch. 130, § 9.

40-8-9. Actions against board — Court determination and authority — Willful evasions and false entries — Penalty — Time limitation on bringing actions. (1) Any person or operator adversely affected by a rule, regulation, or order issued under this act, may bring a civil suit or action against the board in any state court having jurisdiction in Salt Lake County, or in the county in which the affected party resides, to test the validity of any provision of this act, or the rule, regulation, or order, to secure an injunction or to obtain other appropriate relief, including the right of appeal.

(2) The court shall determine the issues on both questions of law and fact and shall affirm or set aside the rule, regulation, or order, or remand the cause to the board for further proceedings. The court is authorized to enjoin permanently the enforcement by the board or division of this act, or any part of it, or any actions done under this act, if the plaintiff shall show that action complained of is unreasonable, unjust, arbitrary, or capricious, or violates any constitutional right of the plaintiff, or if the plaintiff shows that such action does not in a reasonable manner accomplish objectives of this act.

(3) Any person, owner, or operator who willfully or knowingly evades this act, or who for the purpose of evading this act or any rule, regulation, or order issued under this act, willfully or knowingly, makes or causes to be made any false entry in any report, record, account, or memorandum required by this act, or by the rule, regulation or order, or who willfully or knowingly omits or causes to be omitted from any such report, record, account, or memorandum, full, true and correct entries as required by this act, or by the rule, regulation or order, or who willfully or knowingly removes from this state or destroys, mutilates, alters, or falsifies any such record, account, or memorandum, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$10,000 for each violation. Each day of willful failure to comply with an emergency order shall be considered as a separate violation.

(4) No suit, action, or other proceeding based upon a violation of this act, or any rule, regulation, or order issued under this act, shall be commenced or maintained unless such shall have been commenced within two years from date of the alleged violation.

History: L. 1975, ch. 130, § 10.

40-8-10. Notice and procedure. Any notification required by this act, except as otherwise provided in this act, shall be given by the board or division by personal service to individuals directly affected and by one publication in a daily newspaper of general circulation in Salt Lake City, Utah, and in all newspapers of general circulation published in the county or counties in which the land affected is situated. The notification shall issue in the name of the state, shall be signed by the board chairman or such other party as the board may authorize, and shall specify the style and number of the proceedings, the time and place of the hearing, and shall briefly state the purpose of the proceeding. Notification by personal service, may be made in the same manner and extent as is provided in the Utah Rules of Civil Procedure for the service of summons in civil actions. Proof of service shall be in the form required in the Utah Rules of Civil Procedure with respect to service of summons in civil actions. In all cases where a complaint is made by the board, or any party, that any provision of this act, or any rule, regulation, or order issued under this

act is being violated, notification of the hearing to be held on the application or complaint shall be served on the affected parties in the same manner as is provided in the Utah Rules of Civil Procedure for the service of summons in civil actions.

History: L. 1975, ch. 130, § 11.

Cross-References.

Rules of Civil Procedure, Rule 4.

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) Not later than sixty days prior to any general or budget session of the legislature, the board and the division shall prepare and submit to the governor, both houses of the legislature, the legislative council, the joint budget-audit committee, and the joint legal services committee a report of the activities of the board and the division during the last year, including in this an assessment of the problems they have encountered under this act and their recommendations for resolution of same.

(3) 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.

History: L. 1975, ch. 130, § 14.

40-8-12. Objectives. (1) The objectives of mined land reclamation shall be:

(a) 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.

(b) 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.

(c) To minimize or prevent future hazards to public safety and welfare.

History: L. 1975, ch. 130, § 15.

40-8-13. Notice of intention required prior to mining operations — Contents confidential — Division review and decision. (1) Before any operator shall commence mining operations, or continue mining operations pursuant to section 40-8-23, the operator shall file with the division a separate notice of intention for each individual mining operation. The form

of the notice of intention shall be provided for in the rules and regulations promulgated by the board. The notice shall require the operator to detail, but shall not be limited to, a plan of reclamation of the lands affected. In connection with the notice the operator shall furnish evidence in the form of acceptable insurance policies or other factual data that the operator will be financially responsible during the proposed mining operations for the payment of off-site public liability or property damage claims for which he may become liable.

(2) Information provided in the notice of intention and its attachments relating to the location, size, or nature of the deposit, and marked confidential by the operator, shall be protected as confidential information by the board and the division and not be a matter of public record in the absence of a written release from the operator, or until the mining operation has been terminated as provided in subsection (2) of section 40-8-21.

(3) Within 30 days from the receipt of the notice of intention, the division shall complete its review of same and shall make such further inquiries, inspections, or examinations as may be necessary or desirable for proper evaluation of it. The operator shall be promptly notified of any objections to it and be afforded a reasonable opportunity to take such action as may be required to remove the objections or obtain a ruling relative to the objections from the board.

(4) Within thirty days after receipt of the notice of intention or within thirty days following the last action of the operator or the division on the notice of intention, the division shall reach a tentative decision with respect to the approval of the notice of intention, whereupon the information relating to the land affected and the tentative decision shall be forwarded to the operator and be published, in abbreviated form, one time only, in all newspapers of general circulation published in the county or counties where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah. A copy of the abbreviated information and tentative decision shall also be mailed to the zoning authority of the county or counties in which the land affected is situated and to the owner or owners of record of the land affected. Any person or agency aggrieved by the tentative decision may file a written protest with the division, setting forth factual reasons for his complaint. If no factual written protests are received by the division within thirty days after the last date of publication, the tentative decision on the notice of intention shall become final and the operator will be so notified. If written objections of substance are received, a hearing shall be held before the board in accordance with section 40-8-8, following which the board shall issue its decision.

History: L. 1975, ch. 130, § 16.

Law Reviews.

Permits and Approvals Required to Develop an Energy Project in Utah, 1979 Utah L. Rev. 747.

40-8-14. Surety required prior to operations — Procedure — Failure to carry out — Forfeit. (1) After receiving notification that a notice of intention has been approved, but prior to commencement of such operations, the operator shall provide surety to the division, in a form and amount determined by the board.

(2) In determining the amount of surety to be provided, the board shall consider factual information and recommendations provided by the division as to the magnitude, type and costs of approved reclamation activities planned for the land affected and the nature, extent, and duration of operations under the approved notice. The board shall approve a fixed amount estimated as required at any point in time covered by the notice of intent to complete reclamation to an acceptable standard.

(3) In determining the form of surety to be provided by the operator, the board shall approve a method acceptable to the operator and consistent with the requirements of this act which may be one or a combination of but not limited to: a written contractual agreement, collateral, a bond or other form of insured guarantee, deposited securities, or cash. In making this decision the board shall, with respect to the operator, consider such factors as his financial status, his assets within the state, his past performance on contractual agreements, and his facilities available to carry out the planned work.

(4) In determining the amount and form of surety to be provided under this section, consideration shall be given to other similar requirements made effective on the operator by landowners, governmental agencies, or otherwise, with the intent that such surety requirements shall be coordinated and not duplicated.

(5) The liability under surety provisions shall continue until such time as released as to part, or in its entirety, by the division.

(6) If the operator 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. 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. Where surety or a bond has been filed with the division of state lands or an agency of the federal government, the board shall certify a copy of the transcript of the hearing to the division or such agency, together with a request that the necessary forfeiture action be taken. 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.

History: L. 1975, ch. 130, § 17.

40-8-15. Notice of commencement to division — Operations and progress report. (1) Within thirty 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 and regulations promulgated by the board.

History: L. 1975, ch. 130, § 18.

40-8-16. Approved notice of intention valid for life of operation — Withdrawal of approval — Procedure and basis. (1) An approved notice of intention or approved revision of it shall remain valid for the life of the mining operation, as stated in it, unless the board shall withdraw such approval as provided in this act.

(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 such 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 act or fails to remain financially responsible under subsection (1) of section 40-8-13.

(c) Approval may be withdrawn in the event that mining operations are continuously shut down for a period in excess of two years, unless such extended period is accepted upon application of the operator.

(3) Approval of a notice shall not be refused, withheld, nor withdrawn by the division or the board until after a duly-called hearing at which the operator, who holds or has applied for such approval, has had an opportunity to appear, present evidence, cross-examine, and participate fully in the proceedings.

(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.

History: L. 1975, ch. 130, § 19.

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.

History: L. 1975, ch. 130, § 20.

40-8-18. Revised notice of intention authorized — Procedure.

(1) In recognition that mining operations and related reclamation plans may require amendment to fit changing conditions and developing technology, an operator who is conducting mining operations under an approved notice of intention may, at his election, submit to the division a notice of intention to revise mining operations. This notice of intention to revise mining operations shall be submitted in the form provided for in the rules and regulations promulgated by the board.

(2) A notice of intention to revise mining operations shall be processed and considered for approval by the division in the same manner as an original notice of intention, and the operator shall be authorized and bound by the requirements of his existing notice until the revision is acted upon and any revised surety requirements are established and satisfied.

History: L. 1975, ch. 130, § 21.

40-8-19. Approved notice of intention — Transfer to successor operator — Procedure. 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.

History: L. 1975, ch. 130, § 22.

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.

History: L. 1975, ch. 130, § 23.

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

(1) In the case of a temporary suspension of mining operations, excluding labor disputes, expected to be in excess of six months, but not less than two years' duration, the operator shall, within thirty 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 thirty days cause inspection to be made of the property and take whatever action may be appropriate in furtherance of the purposes of this act.

(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 act.

History: L. 1975, ch. 130, § 24.

40-8-22. Division co-operation — Agreements. (1) The division shall co-operate 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 co-operative 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.

History: L. 1975, ch. 130, § 25.

40-8-23. Effective dates — Exceptions. This act shall become effective sixty 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 section 40-8-13.

(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 twelve 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 section 40-8-13.

(4) The board and division, in the initial application of this act and until July 1, 1977, shall not be bound by the thirty-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 thirty days of receipt and action shall be commenced by the division within twelve 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.

History: L. 1975, ch. 130, § 26.

Compiler's Notes.

The 1975 legislature adjourned March 13, 1975.

Separability Clause.

Section 27 of Laws 1975, ch. 30 provided: "If any provision of this act, or the application of any provision to any person or operator or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

CHAPTER 9

OIL REREFINEMENT ACT

Section

- 40-9-1. Short title.
- 40-9-2. Legislative findings — Purpose.
- 40-9-3. Definitions.
- 40-9-3.5. Powers and duties of board and division.
- 40-9-4. Permits for rerefiners, reclaimers and collectors of used oil — Information required of applicants.
- 40-9-5. Disposal of used oil.
- 40-9-6. Violations — Hearings — Restraining orders — Misdemeanors — Limitation of actions.

40-9-1. Short title. This act shall be known and may be cited as the "Utah Oil Rerefinement Act."

History: L. 1977, ch. 55, § 1.

Title of Act.

An act relating to natural resources; providing that the state division of oil, gas and mining conduct a program to encourage the collection and reuse of rerefined oil; providing for the issuance of permits to oil

rerefiners and the requirements for the issuance of such permits; prohibiting the disposal of used oil by establishments covered by this act; and providing a penalty. — Laws 1977, ch. 55.

Collateral References.

38 AmJur 2d 715, Gas and Oil § 228.

40-9-2. Legislative findings — Purpose. (1) It is in the interest of the state to assure that used oil will be recycled in a manner which does not constitute a threat to public health and preserves the quality of air, water and land.

(2) Inform the public that used oil is collected, treated and reused in a manner which conserves energy and does not present a hazard to public health or the environment.

History: C. 1953, 40-9-2, enacted by L. 1981, ch. 176, § 1.

Compiler's Notes.

Laws 1981, ch. 176, § 1 repealed old section 40-9-2 (L. 1977, ch. 55, § 2), relating to legislative findings and purpose of the act, and enacted new section 40-9-2.

Title of Act.

An act relating to the "Utah Oil Rerefinement Act"; changing definitions, and the scope of authority of the board and of the

division of oil, gas and mining; extending permit requirements to reclaimers and collectors of used oil; changing "dealer" to "collector"; and changing sanctions for violation of the act.

This act amends sections 40-9-3, 40-9-4, and 40-9-5, Utah Code Annotated 1953, as enacted by chapter 55, Laws of Utah 1977; enacts section 40-9-3.5, Utah Code Annotated 1953; and repeals and reenacts sections 40-9-2 and 40-9-6, Utah Code Annotated 1953, as enacted by chapter 55, Laws of Utah 1977. — Laws 1981, ch. 176.

40-9-3. Definitions. As used in this act:

- (1) "Board" means the board of oil, gas and mining.
- (2) "Division" means the division of oil, gas and mining.
- (3) "Establishment" means every automobile service station, boat marina, industrial operation, airport, trucking terminal or federal, state or local government facility which generates at least 500 gallons of used oil annually.
- (4) "Lubricating oil" means the fraction of crude oil which is used to reduce friction in an industrial or mechanical device. This term includes rerefined oil.
- (5) "Manifest" means the form used for identifying the quantity and composition and the origin, routing and destination of used oil during its transportation from the point of generation to the point of treatment, storage or disposal.
- (6) "Reclaimed oil" means used oil which has been treated by a method other than that of rerefining.
- (7) "Reclaimer" means a person who uses treatment methods other than those of rerefining, to convert used oil into finished petroleum products suitable for reuse. Those methods may include dehydration, settling, filtering, centrifuging or distillation or any combination thereof.
- (8) "Recycled oil" means oil which is reused following its original use, for any purpose, including the purpose for which the oil was originally used. This term includes oil which is rerefined, reclaimed, burned or reprocessed.
- (9) "Rerefined oil" means used oil which is rerefined to remove the physical and chemical contaminants acquired through use which, by itself or when blended with new oil or additives, is substantially identical or superior to new oil intended for the same purposes.

(10) "Rerefiner" means any person who rerefines used oil to remove its physical and chemical contaminants.

(11) "Used oil" means oil which has been refined from crude oil, used, and as a result of that use, contaminated by physical or chemical impurities.

(12) "Used oil collector" means any person who collects used oil for resale to an oil rerefining facility or for disposal by other methods approved by the board.

History: L. 1977, ch. 55, § 3; 1981, ch. 176, § 2.

Compiler's Notes.

The 1981 amendment inserted subd. (1); redesignated former subds. (1) and (2) as subds. (2) and (3); inserted "federal" in subd. (3); inserted subds. (4) to (8); redesignated former subds. (3) to (6) as subds. (9) to (12); deleted "as specified by the society of automotive engineers" at the end of subd. (9); substituted "oil which has been refined from

crude oil, used, and as a result of that use, contaminated by physical or chemical impurities" in subd. (11) for "all oil which through use is contaminated by physical or chemical impurities which have not been removed by rerefining"; substituted "collector" for "dealer" in subd. (12); and substituted "resale to an oil rerefining facility or for disposal by other methods approved by the board" in subd. (12) for "the purpose of resale to a rerefiner."

40-9-3.5. Powers and duties of board and division. (1) The board and division shall conduct a program to encourage the use of recycled oil so as to achieve the purposes of this act.

(2) The board and division shall adopt rules and regulations to implement the provisions of this act.

(3) The division may license persons and require the use, where appropriate, of manifests.

(4) The divisions may:

(a) Enter at reasonable times any establishment or other place maintained by any person where used oil is collected, treated or disposed of, for the purposes of inspection or obtaining samples of used oil;

(b) Have access to records relating to the collection, treatment or disposal of used oil.

(5) The board may hold hearings to investigate any alleged violation of this act.

History: C. 1953, 40-9-3.5, enacted by L. 1981, ch. 176, § 3.

40-9-4. Permits for rerefiners, reclaimers and collectors of used oil — Information required of applicants. (1) No person may act as a rerefiner or reclaimer without securing a permit from the division. Before issuing a permit, the division shall require information pertaining to the sources and quantities of used oil received for rerefining or reclaiming or both rerefining and reclaiming, the rerefining or reclaiming or both the rerefining and reclaiming facility's plant size and operation capacity, the specific rerefining or reclaiming or both rerefining and reclaiming technologies to be used, the quantities and grades of rerefined or reclaimed

or both rerefined and reclaimed oil to be produced, and the methods of disposing of the waste byproducts, together with such other information as the division deems necessary.

(2) No person may act as a used oil collector without having filed an application with and having obtained a permit from the division. The division shall require as part of the application, to the extent available to the applicant, information pertaining to the methods utilized or to be utilized for collecting and storing used oil, the quantities and types of all used oil collected, or to be collected the quantities and types of used oil delivered or to be delivered to rerefiners or reclaimers or both or otherwise disposed of, including the place of disposal, the methods of transferring, the identity of persons from whom used oil was or is to be received or purchased or to whom it was or is to be transferred or sold and such other information as the division deems necessary.

History: L. 1977, ch. 55, § 4; 1981, ch. 176, § 4.

Compiler's Notes.

The 1981 amendment inserted the subsection (1) designation at the beginning of the

section; substituted "may act as a rerefiner or reclainer" in the first sentence of subsec. (1) for "shall act as a rerefiner after June 30, 1978"; inserted the references to reclaiming or both rerefining and reclaiming throughout subsec. (1); and added subsec. (2).

40-9-5. Disposal of used oil. No establishment covered under this act may dispose of or discard any used oil in any quantity other than through a used oil collector or any other method permitted by the division.

History: L. 1977, ch. 55, § 5; 1981, ch. 176, § 5.

Compiler's Notes.

The 1981 amendment deleted "after July 1, 1977" after "in any quantity"; substituted

"used oil collector" for "used oil dealer or rerefiner"; and made minor changes in phraseology.

40-9-6. Violations — Hearings — Restraining orders — Misdemeanors — Limitation of actions. (1) Whenever it shall appear that any person is violating any provision of this act, or any rule, regulation or order issued under this act, the board shall call a hearing to review the facts in the case. The hearing shall proceed under the board's rules of practice and procedure (rule B) adopted under Chapter 6, Title 40. If, following this hearing, the board finds a violation, it may issue a compliance order or a cessation order, or at its election, bring suit in the name of the state against the person found to have committed 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, to restrain the person from continuing the violation. The court may grant injunctions, prohibitory and mandatory, including temporary restraining orders. Failure to comply with the terms of any order so issued by the court shall be punishable by the imposition of a penalty not to exceed \$1,000 per day for each day of failure to comply, in addition to any fine otherwise imposed for violation of this act.

(2) Any person or entity which knowingly and wilfully violates this act or any rule, regulation or order adopted under this act is guilty of a class "C" misdemeanor.

(3) No suit, action or other proceeding based upon a violation of this act, or any rule, regulation or order issued under this act may be commenced after two years from the date of the alleged violation.

History: C. 1953, 40-9-6, enacted by L. 1981, ch. 176, § 6.

Compiler's Notes.
Laws 1981, ch. 176, § 6 repealed old section 40-9-6 (L. 1977, ch. 55, § 6), relating to violations, and enacted new section 40-9-6.

CHAPTER 10

COAL MINING AND RECLAMATION

Section

- 40-10-1. Legislative finding.
- 40-10-2. Purpose.
- 40-10-3. Definitions.
- 40-10-4. Mined land reclamation provisions applied.
- 40-10-5. Activities exempted from chapter.
- 40-10-6. Powers, functions, and duties of board and division.
- 40-10-7. Financial interest in mining operation prohibited — Penalty — Enforcement — Quorum for board hearings.
- 40-10-8. Exploration regulations issued by division — Contents — Confidential information not to be publicly available — Penalty for violation — Division approval required for removal of excess coal.
- 40-10-9. Permit required for surface coal mining operations — Exemptions — Expiration of permit — Maximum time for commencement of mining operations — Renewal of permit.
- 40-10-10. Permit application fee — Submission of application and reclamation plan — Determinations, tests, and samplings — Filing of application — Insurance requirements — Blasting plan.
- 40-10-11. Division action on permit application — Requirements for approval — Schedule of applicant's mining law violation — Restoration of prime farmland.
- 40-10-12. Revised permit and reclamation plan — Application — Transfer, assignment or sale of rights — Revision or modification of permit provisions.
- 40-10-13. Advertisement of ownership, location and boundaries — Notice to interested agencies or bodies — Objections — Conference.
- 40-10-14. Division's findings issued to applicant and parties to conference — Notice to applicant of approval or disapproval of application — Hearing — Temporary relief — Appeal to district court.
- 40-10-15. Performance bond — Duration of liability under bond — Cash deposit or security in lieu of bond — Surety — Adjustment of amount.
- 40-10-16. Relief of performance bond, surety, or deposit — Inspection and evaluation of reclamation work — Action on application for relief of bond — Objections — Formal hearing or informal conference.
- 40-10-17. Performance standards for all coal mining and reclamation operations — Additional standards for steep-slope surface coal mining — Variances.
- 40-10-18. Underground coal mining — Rules and regulations regarding surface effects — Operator requirements for underground coal mining — Suspension of underground mining on finding of imminent danger to surface inhabitants — Applicability of other chapter provisions.
- 40-10-19. Information provided by permittees to division — Inspections by division — Signs required at operations entrances — Violations reported by reclamation office — Copies of records and reports available to public.