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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 [and Section 40-8-14].

(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.

Meaning of "this act". — See note under same catchline following § 40-8-1.

Compiler's Notes. — Pursuant to the introductory paragraph in this section and Utah

Const., Art. VI, Sec. 25, Laws 1975, Chapter 130 became effective on May 13, 1975.

Surety requirements, referred to in Subsections (1) and (3), are set out in § 40-8-14.

CHAPTER 9

OIL REREFINEMENT ACT

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

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.

Meaning of "this act". — "This act," appearing at the beginning of the section, means

Laws 1977, Chapter 55, which now appears as §§ 40-9-1, 40-9-3, 40-9-4, and 40-9-5. The reference should probably be to "this chapter."

COLLATERAL REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d Gas and Oil § 228.

C.J.S. — Mines and Minerals § 229 et seq.

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.

Repeals and Reenactments. — Laws 1981, ch. 176, § 1 repealed former § 40-9-2 (L. 1977,

ch. 55, § 2), relating to legislative findings and purpose of the act, and enacted present § 40-9-2.

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.

Meaning of "this act". — See note under same catchline following § 40-9-1.

Cross-References. — Board and Division of

Oil, Gas and Mining, §§ 40-6-4, 40-6-15 respectively.

Words and phrases defined by statute, construction of, § 68-3-11.

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 division 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.

Meaning of "this act". — The phrase "this act," used in Subsections (1), (2), and (5),

means Laws 1981, Chapter 176, which now appears as §§ 40-9-2 to 40-9-6. The reference should probably be to "this chapter."

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.

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.

Meaning of "this act". — See note under same catchline following § 40-9-1.

40-9-6. Violations — Adjudicative proceedings — Injunctions — Misdemeanors — Limitation of actions.

(1) (a) Whenever it appears that any person is violating any provision of this chapter, or any rule or order issued under the authority of this chapter, the board shall file a notice of agency action and hold an adjudicative proceeding.

(b) If, following this hearing, the board finds a violation, it may:

(i) issue a compliance order or a cessation order; or

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

(c) The court may grant injunctions, prohibitory and mandatory, including temporary restraining orders.

(d) Failure to comply with the terms of any order issued by the court is 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 chapter.

(2) Any person or entity who knowingly and willfully violates this chapter or any rule or order adopted under the authority of this chapter is guilty of a class "C" misdemeanor.

(3) No suit, action, or other proceeding based upon a violation of this chapter, or any rule or order issued under the authority of this chapter, 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; 1987, ch. 161, § 127.

Repeals and Reenactments. — Laws 1981, ch. 176, § 6 repealed former § 40-9-6 (L. 1977, ch. 55, § 6), relating to violations, and enacted present § 40-9-6.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, rewrote the section to the extent that a detailed analysis is impracticable.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

CHAPTER 10

COAL MINING AND RECLAMATION

Section		Section	
40-10-1.	Legislative finding.		approval or disapproval of application — Hearing — Temporary relief — Appeal to district court — Further review by Supreme Court.
40-10-2.	Purpose.		
40-10-3.	Definitions.		
40-10-4.	Mined land reclamation provisions applied.		
40-10-5.	Activities exempted from chapter.	40-10-15.	Performance bond — Duration of liability under bond — Cash deposit or securities in lieu of bond — Surety — Adjustment of amount.
40-10-6.	Powers, functions, and duties of board and division.		
40-10-6.5.	Rulemaking authority and procedure.		
40-10-6.6.	Deadline for review and proposal of revision of rules — Deadline for revision of rules — Effect of notice of violation or denial of permit.	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.
40-10-7.	Financial interest in mining operation prohibited — Penalty — Enforcement — Quorum for board hearings.	40-10-17.	Performance standards for all coal mining and reclamation operations — Additional standards for steep-slope surface coal mining — Variances.
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.	40-10-18.	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.
40-10-9.	Permit required for surface coal mining operations — Exemptions — Expiration of permit — Maximum time for commencement of mining operations — Renewal of permit.	40-10-19.	Information provided by permittees to division — Inspections by division — Signs required at operations entrances — Violations reported by reclamation officers — Copies of records and reports available to public.
40-10-10.	Permit application fee — Submission of application and reclamation plan — Determinations, tests, and samplings — Filing of application — Insurance required — Blasting plan.	40-10-20.	Civil penalty for violation of chapter — Public hearing — Contest of violation or amount of penalty — Collection — Criminal penalties — Civil penalty for failure to correct violation.
40-10-11.	Division action on permit application — Requirements for approval — Schedule of applicant's mining law violation — Restoration of prime farmland.	40-10-21.	Civil action to compel compliance with chapter — Jurisdiction — Venue — Division and board as parties — Court costs — Security when temporary restraining order or injunction sought — Other rights not affected — Action for damages.
40-10-12.	Revised permit and reclamation plan — Application — Transfer, assignment or sale of rights — Revision or modification of permit provisions.	40-10-22.	Violation of chapter or permit conditions — Inspection — Cessation order, abatement notice,
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		

Section	Section
	plementation requests — Costs for proposed projects.
40-10-23. Time for bringing criminal proceeding.	40-10-27. Entry upon land adversely affected by past coal mining practices — Conducting of studies or exploratory work — State acquisition of land — Lien — Waste disposal fund — Water pollution control and treatment plants.
40-10-24. Determination of unsuitability of lands for surface coal mining — Petition — Public hearing — Detailed statement by division.	40-10-28. Recovery of reclamation costs — Lien against reclaimed land.
40-10-25. Dedicated credits — Expenditure priorities — Eligible lands and water — Abandoned Mine Expendable Trust Fund — Transfer of funds — Investment by state treasurer.	40-10-29. Other enforcement and protection rights unaffected — Operator to replace adversely affected water supply of legitimate users.
40-10-26. State reclamation plan and annual projects submitted to secretary of interior — Contents of plan — Annual support and im-	40-10-30. Judicial review of rules or orders.
	40-10-31. Chapter's procedures supersede Chapter 46b, Title 63.

40-10-1. Legislative finding.

The Utah Legislature finds that:

(1) Coal mining operations presently contribute significantly to the nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of Utah's coal reserves can only be extracted by underground mining methods; and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry.

(2) The expansion of coal mining in Utah to meet the nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.

(3) Surface mining and reclamation technology is now developed so that effective and reasonable regulation of surface coal mining operations is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of the mining operations.

(4) In recognition of the innate differences between coal and other mineral deposits and between surface and underground mining methods, the Legislature perceives a need for a separate chapter for effective and reasonable regulation of such operations.

History: C. 1953, 40-10-1, enacted by L. 1979, ch. 145, § 1.

Cross-References. — Mined land reclamation, § 40-8-1 et seq.

COLLATERAL REFERENCES

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

Utah Legislative Survey — 1979, 1980 Utah L. Rev. 155.

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 172.

C.J.S. — 58 C.J.S. Mines and Minerals § 229 et seq.

A.L.R. — Validity and construction of statutes regulating strip mining, 86 A.L.R.3d 27.

40-10-2. Purpose.

It is the purpose of this chapter to:

(1) Grant to the Board and Division of Oil, Gas and Mining the necessary authority to assure exclusive jurisdiction over non-federal lands and cooperative jurisdiction over federal lands in regard to regulation of coal mining and reclamation operations as authorized pursuant to Public Law 95-87.

(2) Assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from these operations.

(3) Assure that surface coal mining operations are conducted so as to protect the environment, that reclamation occurs as contemporaneously as possible with the operations, and that operations are not conducted where reclamation as required by this chapter is not economically or technologically feasible.

(4) Assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the state under this chapter.

(5) Promote the reclamation of mined areas left without adequate reclamation prior to the effective date of this chapter and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

(6) Wherever necessary, exercise the full reach of state constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations and efficient reclamation of abandoned mines.

History: C. 1953, 40-10-2, enacted by L. 1979, ch. 145, § 1.

"Effective date of this chapter". — The phrase "effective date of this chapter" in Subsection (5) means the effective date of Laws 1979, Chapter 145, which enacted this chapter and which became effective on March 20, 1979.

Public Law 95-87. — Public Law 95-87, cited at the end of Subsection (1), enacted the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq.

Cross-References. — Board of Oil, Gas and Mining, § 40-6-4.

Division of Oil, Gas and Mining, § 40-6-15.

40-10-3. Definitions.

For the purposes of this chapter:

(1) "Alluvial valley floors" mean the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

(2) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends

into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; but water impoundments may be permitted where the division determines that they are in compliance with Subsection 40-10-17(2)(h).

(3) "Board" means the Board of Oil, Gas and Mining and the board shall not be defined as an employee of the division.

(4) "Division" means the Division of Oil, Gas and Mining.

(5) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation or [of] death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(6) "Employee" means those individuals in the employ of the division and excludes the board.

(7) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.

(8) "Other minerals" mean clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid or solution form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

(9) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the division.

(10) "Permit applicant" or "applicant" means a person applying for a permit.

(11) "Permitting agency" means the division.

(12) "Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by Section 40-10-15 and shall be readily identifiable by appropriate markers on the site.

(13) "Permittee" means a person holding a permit.

(14) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.

(15) "Prime farmland" means the same as prescribed by the United States Department of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics.

(16) "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to Section 40-10-10.

(17) "Surface coal mining and reclamation operations" mean surface mining operations and all activities necessary and incident to the reclamation of these operations after the effective date of this chapter.

(18) "Surface coal mining operations" mean:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 40-10-18, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. These activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountain-top removal box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; but these activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16²/₃% of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to Section 40-10-8.

(b) The areas upon which the activities occur or where the activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage and excavations, working, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailing, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities.

(19) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

History: C. 1953, 40-10-3, enacted by L. 1979, ch. 145, § 1.

"Effective date of this chapter". — See note under same catchline following § 40-10-2.

Cross-References. — Board of Oil, Gas and Mining, § 40-6-4.

Division of Oil, Gas and Mining, § 40-6-15.
Words and phrases defined by statute, construction of, § 68-3-11.

40-10-4. Mined land reclamation provisions applied.

The Utah Mined Land Reclamation Act (Chapter 8 of Title 40), and the rules and regulations adopted under it, where appropriate, and not in conflict with the provisions of this chapter or the rules and regulations adopted under it, shall be applicable to coal mining operations and reclamation operations.

History: C. 1953, 40-10-4, enacted by L. 1979, ch. 145, § 1.

40-10-5. Activities exempted from chapter.

(1) The provisions of this chapter shall not apply to any of the following activities:

(a) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less; and

(c) the extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the division.

(2) In addition to nongovernmental surface mining operators subject to this chapter, any agency, unit, or instrumentality of federal, state, or local government, including any publicly-owned corporation of federal, state, or local government, which purposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter.

History: C. 1953, 40-10-5, enacted by L. 1979, ch. 145, § 1.

40-10-6. Powers, functions, and duties of board and division.

In addition to those provided in Chapter 8 of Title 40, the board and division shall have the following powers, functions, and duties:

(1) To make and promulgate in accordance with the Utah Administrative Rulemaking Act (Chapter 46 [Chapter 46a] of Title 63) such rules and regulations as are specifically necessary for the regulation of coal mining operations and reclamation operations.

(2) To authorize its employees, agents or contractors to enter upon any property for the purpose of carrying out the provisions of this chapter and Chapter 8 of Title 40.

(3) To establish specific reclamation and/or performance standards for new and existing coal mining operations and to effectuate these standards retroactively.

(4) To prohibit mining and exploration operations without a permit and to establish procedures and requirements for the preparation, submission, approval, denial, termination, and modification of applications for coal mining and reclamation permits and for coal exploration permits.

(5) To set and assess an application fee based on no more than the actual cost of review and processing of the application, this fee to accompany each application for a surface coal mining and reclamation permit and each application for an exploration permit.

(6) To establish procedures and detailed requirements for all reclamation plans submitted as part of a permit application.

(7) To condition the issuance of a permit to commence or continue surface mining operations upon the posting of performance bonds, deposits or sureties and to make provision for the release of same in compliance with the requirements of this chapter.

(8) To appoint or employ technical support, legal services, or independent consultants in furtherance of the objectives of this chapter and shall

be responsible for coordination with other agencies in matters relating to mined land reclamation and the application of related law.

(9) To do all other things and take such other actions retroactively or otherwise within the purposes of this chapter as may be necessary to enforce its provisions.

History: C. 1953, 40-10-6, enacted by L. 1979, ch. 145, § 1.

Administrative Rulemaking Act. — Chapter 46 of Title 63, the former Utah Administrative Rulemaking Act, was repealed by Laws

1985, Chapter 158. The present Administrative Rulemaking Act is contained in Chapter 46a of Title 63.

Cross-References. — Board and Division of Oil, Gas and Mining, § 40-8-5.

40-10-6.5. Rulemaking authority and procedure.

(1) Except as provided in Subsection (2), no rule which the board adopts for the purpose of the state administering a program under the federal Surface Mining Control and Reclamation Act may be more stringent than the corresponding federal regulations which address the same circumstances. In adopting such rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing, and based on evidence in the record, that the corresponding federal regulation is not adequate to protect public safety and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public safety and environmental information and studies contained in the record which form the basis for the board's conclusion.

(3) Hearings under this chapter shall be conducted in a manner which guarantees the parties' due process rights. This includes, but is not limited to, the right to examine any evidence presented to the committee, the right to cross-examine any witness, and a prohibition of ex parte communication between any party and a member of the board.

History: C. 1953, 40-10-6.5, enacted by L. 1988, ch. 30, § 1.

Surface Mining Control and Reclamation Act. — The federal Surface Mining Control and Reclamation Act, cited in Subsection

(1), is codified as 30 U.S.C. § 1201 et seq.

Effective Dates. — Laws 1988, Chapter 30 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

40-10-6.6. Deadline for review and proposal of revision of rules — Deadline for revision of rules — Effect of notice of violation or denial of permit.

(1) Within six months after the effective date of this act, the board shall review and propose revisions to its rules to ensure compliance with this act. No later than 12 months after the effective date of this act, the division shall revise its rules to comply with this act.

(2) All existing rules of the division shall remain in full force and effect after the effective date of this act, pending board review and revision under Subsection (1).

(3) Any person who is issued a notice of violation, or a denial of a permit or other approval, based on a rule of the division which is more stringent than

the corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the grounds and to the extent that the division's rule violates this act by imposing requirements more stringent than corresponding federal regulations, unless that more stringent state rule has been adopted in compliance with this act.

History: C. 1953, 40-10-6.6, enacted by L. 1988, ch. 30, § 2.

"Effective date of this act". — The phrase "effective date of this act" means April 25, 1988, the effective date of Laws 1988, Chapter 30.

Meaning of "this act". — The phrase "this act," appearing several times in the section,

means Laws 1988, Chapter 30, which appears as §§ 40-10-6.5, 40-10-6.6, and 40-10-25. It apparently refers only to §§ 40-10-6.5 and 40-10-6.6.

Effective Dates. — Laws 1988, Chapter 30 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

40-10-7. Financial interest in mining operation prohibited — Penalty — Enforcement — Quorum for board hearings.

(1) No employee of the division performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both. The division shall adopt regulations to establish methods by which the provisions of this subsection will be monitored and enforced by the division, including appropriate provisions for filing by these employees and the review of statements and supplements to same concerning any financial interest which may be affected by this section.

(2) For the purpose of holding hearings under this chapter, a quorum of the board shall consist of those members or member who has no conflict of interest as set out in Public Law 95-87 and the rules and regulations adopted under it.

History: C. 1953, 40-10-7, enacted by L. 1979, ch. 145, § 1.

Public Law 95-87. — Public Law 95-87,

cited in Subsection (2), enacted the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq.

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.

(1) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations issued by the division. The regulations shall include, at a minimum:

(a) The requirement that prior to conducting any exploration under this section, any person must file with the division notice of intention to explore, and the notice shall include a description of the exploration area and the period of proposed exploration; and

(b) Provisions for reclamation in accordance with performance standards in Section 40-10-17 of all lands disturbed in exploration, including

excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(2) Information submitted to the division pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intending to explore the described area shall not be available for public examination.

(3) Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant to it shall be subject to the provisions of Section 40-10-20.

(4) No person shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the division.

History: C. 1953, 40-10-8, enacted by L. 1979, ch. 145, § 1.

40-10-9. Permit required for surface coal mining operations — Exemptions — Expiration of permit — Maximum time for commencement of mining operations — Renewal of permit.

(1) No person shall engage in or carry out surface coal mining operations within the state unless that person has first obtained a permit issued by the division pursuant to an approved mining and reclamation program, but the permit will not be required if the operations are exempt as provided in Section 40-10-5.

(2) All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years; but if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the division may grant a permit for the longer term. A successor in interest to a permittee who applies for a new permit within 30 days after succeeding to the interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(3) A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three years after the issuance of the permit; but the division may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding this commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(4) (a) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit

may apply for renewal, and the renewal shall be issued (but on application for renewal the burden shall be upon the opponents of renewal), subsequent to fulfillment of the public notice requirements of Sections 40-10-13 and 40-10-14 unless it is established that and written findings by the division are made that:

- (i) The terms and conditions of the existing permit are not being satisfactorily met;
- (ii) The present surface coal mining and reclamation operation is not in compliance with the approved plan;
- (iii) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;
- (iv) The operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the division might require pursuant to Section 40-10-15; or
- (v) Any additional revised or updated information required by the division has not been provided.

Prior to the approval of any renewal of any permit, the division shall provide notice to the appropriate public authorities.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter; but if the surface coal mining operations authorized by a permit issued pursuant to this chapter were not subject to the standards contained in Subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii) by reason of complying with the provisions of Subsection 40-10-11(2)(e), then the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to Section 40-10-10 shall not be subject to the standards contained in Subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii).

(c) Any permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for permit renewal shall be made at least 120 days prior to the expiration of the valid permit.

History: C. 1953, 40-10-9, enacted by L. 1979, ch. 145, § 1.

40-10-10. Permit application fee — Submission of application and reclamation plan — Determinations, tests, and samplings — Filing of application — Insurance required — Blasting plan.

(1) Each application for a surface coal mining and reclamation permit under the provisions of this chapter shall be accompanied by a fee as determined by the division, but not to exceed the cost of application, review, and processing.

(2) The permit application and the reclamation plan submitted as part of a permit application shall be submitted in the manner, form, and content speci-

fied by the division in implementing rules and regulations and shall contain, among other things:

(a) The names and addresses of:

- (i) the permit applicant;
- (ii) every legal owner of record of the property (surface and mineral) to be mined;
- (iii) the holders of record of any leasehold interest in the property;
- (iv) any purchaser of record of the property under a real estate contract;
- (v) the operator if he is a person different from the applicant; and
- (vi) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent for service of process.

(b) An accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations and shall provide to the division a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation; but nothing in this chapter shall be construed as vesting in the division the jurisdiction to adjudicate property title disputes.

(c) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the division of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and, particularly, upon water availability; but this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until this information is available and is incorporated into the application.

(d) A statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found; an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic-forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined, except that the provisions of this subsection may be waived by the division with respect to the specific application by a written determination that these requirements are unnecessary.

(3) If the division finds that the probable total annual production at all locations of any coal surface mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences required by Subsection (2)(c) and the statement of the result of test borings or core samplings required by Subsection (2)(d) shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the divi-

sion; and the cost of the preparation of this determination and statement shall be assumed by the division.

(4) Information pertaining to coal seams, test borings, core samplings, or soil samples or other equivalent information as required by this section shall be made available to any person with an interest which is or may be adversely affected; but information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding any mineral or elemental content which is potentially toxic to the environment) shall be kept confidential and not made a matter of public record.

(5) Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate public office approved by the division where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

(6) Each applicant for a permit shall be required to submit to the division as part of the permit application a certificate issued by an insurance company authorized to do business in the state of Utah certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operation for which the permit is sought or evidence that the applicant has satisfied other state or federal self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(7) Each applicant for a surface coal mining and reclamation permit shall submit to the division as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of Subsection 40-10-17(2)(o).

History: C. 1953, 40-10-10, enacted by L. 1979, ch. 145, § 1; 1981, ch. 175, § 1.

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

(1) Upon the basis of a complete mining application and reclamation plan or a revision or renewal of same, as required by this chapter, including public notification and an opportunity for a public hearing as required by Section 40-10-13 [Section 40-10-14], the division shall grant, require modification of, or deny the application for a permit in a reasonable time set by the division and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of this chapter. Within 10 days after the granting of a permit, the division shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe 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 the requirements of this chapter have been complied with.

(b) The applicant has demonstrated that reclamation as required by 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 of same has been designed to prevent material damage to hydrologic balance outside the permit area.

(d) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to Section 40-10-24 or is not within an area under study for such designation in an administrative proceeding commenced pursuant to Subsection 40-10-24(2) (unless in the area as to which an administrative proceeding has commenced pursuant to Section 40-10-24, the operator demonstrates that prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit).

(e) The proposed surface coal mining operation would:

(i) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but excluding undeveloped range lands which are not significant to farming on the alluvial valley floors and those lands as to which the division finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors 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.

(f) In cases where 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, however, that nothing in this section shall be construed as increasing or diminishing any property rights by the state of Utah or by any other landowner.

(ii) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(iii) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law.

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(3) The applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter 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. The schedule shall also indicate the final resolution of any notice of violation. Where the schedule 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 referred to in this subsection, 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; and 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 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) In addition to finding the application in compliance with Subsection (2), if the area proposed to be mined contains prime farmland pursuant to division regulations, 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 equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards specified in division regulations. Except for compliance with Subsection (2), the requirements of this Subsection (4)(a) shall apply to all permits issued after August 3, 1977.

(b) Nothing in this Subsection (4) shall apply to any permit issued prior to August 3, 1977 or to any revisions or renewals of it, or to any existing surface mining operations for which a permit was issued prior to August 3, 1977.

History: C. 1953, 40-10-11, enacted by L. 1979, ch. 145, § 1; 1981, ch. 175, § 2.

Compiler's Notes. — Section 40-10-13, cited in Subsection (1), requires public notification, allows submission of comments, and pro-

vides for conferences among interested parties. Section 40-10-14, cited by the compiler, provides that the applicant or any person with an interest that is or may be adversely affected may request a hearing.

40-10-12. Revised permit and reclamation plan — Application — Transfer, assignment or sale of rights — Revision or modification of permit provisions.

(1) (a) During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the division.

(b) An application for a revision of a permit shall not be approved unless the division finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the division. The division shall establish guidelines for a determination of the

scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; but any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(c) Any extensions to the area covered by the permit, except incidental boundary revisions must be made by application for another permit.

(2) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this chapter shall be made without the written approval of the division.

(3) The division shall, within a time limit prescribed in regulations promulgated by the board, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of the permit; but the revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by this chapter.

History: C. 1953, 40-10-12, enacted by L. 1979, ch. 145, § 1.

40-10-13. Advertisement of ownership, location and boundaries — Notice to interested agencies or bodies — Objections — Conference.

(1) At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit pursuant to the provisions of this chapter, the applicant shall submit to the division a copy of his advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission the advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The division shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities of water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly-described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the division on the mining applications with respect to the effects of the proposed operation on the environment which are within their area of responsibility. These comments shall immediately be transmitted to the applicant by the division and shall be made available to the public at the same locations as are the mining applications.

(2) (a) Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operations with the division within 30 days after the last publication of the notice. These objections shall immediately be transmitted to the applicant by the division and shall be made available to the public.

(b) If written objections are filed and a conference requested, the division shall then hold a conference within a reasonable time of the receipt of the objections or request. The date, time, and location of the conference shall be advertised by the division in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The division may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. This record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the conference stipulate agreement prior to the requested conference and withdraw their request, the conference need not be held.

History: C. 1953, 40-10-13, enacted by L. 1979, ch. 145, § 1.

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 — Further review by Supreme Court.

(1) If a conference has been held under Subsection 40-10-13(2), the division shall issue and furnish the applicant for a permit and persons who are parties to the proceedings with the written finding of the division granting or denying the permit in whole or in part and stating the reasons, within the 60 days after the conference.

(2) If there has been no conference held under Subsection 40-10-13(2), the division shall notify the applicant for a permit within a reasonable time as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved in whole or part.

(3) Upon approval of the application, the permit shall be issued. If the application is disapproved, specific reasons shall be set forth in the notification. Within 30 days after the applicant is notified of the final decision of the division on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The board shall hold a hearing pursuant to the rules of practice and procedure set forth in implementing rules and regulations within 30 days of this request and provide notification to all interested parties at the time that the applicant is notified. Within 30 days after the hearing the board shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the board granting or denying the permit in whole or in part and stating the reasons.

(4) Where a hearing is requested pursuant to Subsection (3), the board may, under conditions it prescribes, grant temporary relief it deems appropriate pending final determination of the proceedings if:

(a) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(b) the person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings; and

(c) the relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(5) For the purpose of the hearing, the board may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the board.

(6) Any applicant, or any person with an interest which is or may be adversely affected who has participated in the proceedings as an objector, and who is aggrieved by the decision of the board, or if the board fails to act within the time limits specified in this chapter, has the right to appeal to the district court for the county in which the proposed operation is located. Review of the adjudication of the district court is by the Supreme Court.

History: C. 1953, 40-10-14, enacted by L. 1979, ch. 145, § 1; 1986, ch. 47, § 23. Amendment Notes. — The 1986 amendment added the last sentence in Subsection (6) and made various stylistic changes throughout the section.

40-10-15. Performance bond — Duration of liability under bond — Cash deposit or securities in lieu of bond — Surety — Adjustment of amount.

(1) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the division on a form prescribed and furnished by the division, a bond for performance payable, as appropriate, to the United States or to the state and conditional upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the division an additional bond or bonds to cover these increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the division. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the division in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

(2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the opera-

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tor's responsibility for revegetation requirements in Section 40-10-17. The bond shall be executed by the operator and a corporate surety licensed to do business in the state, except that the operator may elect to deposit cash, negotiable bonds of the United States government, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.

(3) The division may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the division the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.

(4) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. The securities shall be security for the repayment of the negotiable certificate of deposit.

(5) The amount of the bond, surety, or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the division from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

History: C. 1953, 40-10-15, enacted by L. 1979, ch. 145, § 1.

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.

(1) The division shall adopt and promulgate rules and regulations providing for the release of all or part of a performance bond, surety, or deposit which will include the following requirements:

(a) filing of a request with the division by the operator; and

(b) advertisement by the operator designed to give public notice of the release and the reclamation steps taken by the operator.

(2) Upon receipt of the notification and request, the division shall within 30 days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and sub-surface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The division shall notify the operator in writing of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, if no public hearing is held pursuant to Subsection (6), and if there has been a public hearing held pursuant to Subsection (6), within 30 days thereafter.

(3) The division may release in whole or in part the bond or deposit if the division is satisfied the reclamation covered by the bond or deposit or portion of them has been accomplished as required by this chapter according to the schedule set forth in the division's implementing regulations, but no bond shall be fully released until all reclamation requirements of this chapter are finally met.

(4) If the division disapproves the application for release of the bond or portion of it, the division shall notify the permittee in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(5) When any application for total or partial bond release is filed with the division, the division shall notify the municipality in which a surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(6) (a) Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to these operations shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the above notice.

(b) If written objections are filed and a formal hearing requested, the board shall inform all the interested parties of the time and place of the hearing and hold a public hearing within 30 days after the request for the hearing. The date, time, and location of these public hearings shall be advertised by the board in a newspaper of general circulation in the locality for two consecutive weeks, within 30 days after the request for the hearing.

(c) For the purpose of formal hearing the board shall have the authority and is hereby empowered to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or production of the materials, and take evidence including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this chapter shall be made and a transcript made available on the motion of any party or by order of the board.

(d) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the division pursuant to this section, the division may establish an informal conference to resolve these written objections.

History: C. 1953, 40-10-16, enacted by L.
1979, ch. 145, § 1; 1981, ch. 175, § 3.

40-10-17. Performance standards for all coal mining and reclamation operations — Additional standards for steep-slope surface coal mining — Variances.

(1) Any permit issued pursuant to this chapter to conduct surface coal mining shall require that the surface coal mining operations will meet all applicable performance standards of this chapter, and such other requirements as the division shall promulgate.

(2) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operations as a minimum to:

(a) Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that

reaffecting the land in the future through surface coal mining can be minimized.

(b) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as the use or uses does [do] not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicant's declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state, or local law.

(c) Except as provided in Subsection (3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade in order to restore the approximate original contour of the land with highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter); but in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this chapter.

(d) Stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution.

(e) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil, and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means there-

after so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata which is best able to support vegetation.

(f) Restore the topsoil or the best available subsoil which is best able to support vegetation.

(g) For all prime farmlands as identified in implementing regulations to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction, the operator shall, as a minimum, be required to:

(i) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(ii) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of these horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(iii) Replace and regrade the root zone material described in Subsection (2)(g)(ii) above with proper compaction and uniform depth over the regraded spoil material; and

(iv) Redistribute and grade in a uniform manner the surface soil horizon described in Subsection (2)(g)(i).

(h) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(i) The size of the impoundment is adequate for its intended purposes;

(ii) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566(16 U.S.C. 1006);

(iii) The quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(iv) The level of water will be reasonably stable;

(v) Final grading will provide adequate safety and access for proposed water users; and

(vi) These water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(i) Conducting [Conduct] any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the division determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety; but the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts.

(j) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(i) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and [to] keep acid or other toxic drainage from entering ground and surface waters.

(ii) (A) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) Constructing any siltation structures pursuant to Subsection (2)(j)(ii) prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan.

(iii) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the division;

(iv) Restoring recharge capacity of the mined area to approximate premining conditions;

(v) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) Preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the state; and

(vii) Such other actions as the division may prescribe.

(k) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other waste in areas other than the mine working or excavations stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.

(l) Refrain from surface coal mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; but the division shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(i) The nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the departments, divisions, and agencies concerned with surface mine reclamation and the health and safety of underground miners; and

(ii) The operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to the division's rules and regulations, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments.

(n) Insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion.

(o) Insure that explosives are used only in accordance with existing state and federal law and the regulations adopted by the board, which shall include provisions to:

(i) Provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in these areas prior to any blasting;

(ii) Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(iii) Limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public

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and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

(iv) Require that all blasting operations be conducted by trained and competent persons, and to implement this requirement, the division shall promulgate regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface and coal mining operations;

(v) Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of the structures and submit the survey to the division and a copy to the resident or owner making the request, the area of which survey shall be decided by the division and shall include such provisions as promulgated.

(p) Insure that all reclamation efforts proceed in an environmentally-sound manner and as contemporaneously as practicable with the surface coal mining operations; but where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the division may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground operations prior to reclamation:

(i) If the division finds in writing that:

(A) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(B) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(C) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(D) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(E) No substantial adverse environmental damage, either on-site or offsite, will result from the delay in completion of reclamation as required by this chapter;

(F) Provisions for the offsite storage of spoil will comply with Subsection 40-10-17(2)(v).

(ii) If the board has adopted specific regulations to govern the granting of the variances in accordance with the provisions of this Subsection (2)(p) and has imposed such additional requirements as deemed necessary;

(iii) If variances granted under this Subsection (2)(p) are to be reviewed by the division not more than three years from the date of issuance of the permit; and

(iv) If liability under the bond filed by the applicant with the division pursuant to Section 40-10-15 shall be for the duration of the underground mining operations and until the requirements of Subsection 40-10-17(2) and Section 40-10-16 have been fully complied with.

(q) Insure that the construction, maintenance, and post-mining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property.

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel so as to seriously alter the normal flow of water.

(s) Establish on the regraded areas and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved post-mining land use plan.

(t) Assume the responsibility for successful revegetation, as required by Subsection (2)(s), for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with Subsection (2)(s), except in those areas or regions of the state where the annual average precipitation is 26 inches or less, then the operator's assumption of responsibility and liability will extend for a period of 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work; but when the division approves a long-term intensive agricultural post-mining land use, the applicable five or 10-year period of responsibility for revegetation shall commence at the date of initial planting for this long-term intensive, agricultural post-mining land use, except when the division issues a written finding approving a long-term, intensive, agricultural post-mining land use, as part of the mining and reclamation plan, the division may grant exception to the provisions of Subsection (2)(s).

(u) Protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(v) Place all excess spoil material resulting from coal surface mining and reclamation activities in a manner that:

(i) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way to assure mass stability and to prevent mass movement;

(ii) The areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(iii) Appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(iv) The disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed

from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented;

(v) If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the division, the spoil could be placed in compliance with all the requirements of this chapter and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if this placement provides additional stability and prevents mass movement;

(vi) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement, is constructed;

(vii) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(viii) Design of the spoil disposal area is certified by a qualified professional engineer, and to implement this requirement, the division shall promulgate regulations regarding the certification of engineers in the area of spoil disposal design; and

(ix) All other provisions of this chapter are met.

(w) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.

(x) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practicable.

(y) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance as the division shall determine shall be retained in place as a barrier to slides and erosion.

(3) (a) Where an applicant meets the requirements of Subsections (3)(b) and (c), a permit without regard to the requirement to restore to approximate original contour provided in Subsections (2)(c), (4)(b), and (4)(c) may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in Subsection (3)) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting post-mining uses in accord with the requirements of this subsection.

(b) In cases where an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the post-mining use of the affected land, the division may grant a permit for a surface mining operation of the nature described in Subsection (3)(a) pursuant to procedures and criteria set forth in implementing rules and regulations, including:

(i) The applicant's presentation of specific plans for the proposed post-mining land use which meet criteria concerning the type of use proposed;

(ii) The applicant's demonstration that the proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs and with other requirements of this chapter;

(iii) Procedures whereby the division provides the governing body of the unit of general-purpose government in which the land is lo-

cated and any state or federal agency which the division, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use.

(c) All permits granted under the provisions of this Subsection (3) shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(4) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section; but the provisions of this Subsection (4) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection (3):

(a) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; but spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Subsection (2)(c) or this Subsection (4) shall be permanently stored pursuant to Subsection 40-10-17(2)(v).

(b) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.

(c) The operator may not disturb land above the top of the highwall unless the division finds that the disturbance will facilitate compliance with the environmental protection standards of this section; but the land disturbed above the highwall shall be limited to that amount necessary to facilitate this compliance.

(d) For the purposes of this Subsection (4), "steep slope" means any slope above 20° or such lesser slope as may be defined by the division after consideration of soil, climate, and other characteristics of an area.

(5) The board shall promulgate specific regulations to govern the granting of variances from the requirement to restore to approximate original contour provided in Subsection (4)(b) pursuant to procedures and criteria set forth in those regulations including:

(a) Written request by the surface owner concerning the proposed use;
(b) Approval of the proposed use as an equal or better economic or public use;

(c) Approval of the proposed use as improving the watershed control in the area and as using only such amount of spoil as is necessary to achieve the planned post-mining land use.

History: C. 1953, 40-10-17, enacted by L. 1979, ch. 145, § 1; 1981, ch. 175, § 4.

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.

(1) The board shall adopt rules and regulations directed toward the surface effects of underground coal mining operations, embodying the requirements provided in this section. In adopting any rules and regulations the board shall consider the distinct difference between surface coal mining and underground coal mining methods.

(2) Each permit issued pursuant to this chapter and relating to underground coal mining shall require the operator to:

(a) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of the surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner; but nothing in this Subsection (2) shall be construed to prohibit the standard method of room and pillar mining.

(b) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations.

(c) Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations.

(d) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that the leachate will not degrade below water quality standards established pursuant to applicable federal and state law surface or ground waters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section.

(e) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon in accordance with the standards and criteria developed pursuant to Section 40-10-17 all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes used either temporarily or permanently as dams or embankments.

(f) Establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area.

(g) Protect offsite areas from damages which may result from the mining operations.

(h) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public.

(i) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quantity of water in surface and groundwater systems both during and after coal mining operations and during reclamation by:

(i) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters.

(ii) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall these contributions be in excess of requirements set by applicable state or federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(j) With respect to other surface impacts not specified in this Subsection (2), including the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structure, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under Section 40-10-17 for such effects which result from surface coal mining operations; but the division shall make the modification in the requirements imposed by this Subsection (2)(j) as are necessary to accommodate the distinct difference between surface and underground coal mining methods.

(k) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practicable.

(l) Locate openings for all new drift mines working acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(3) In order to protect the stability of the land, the board shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if, after proper notice and hearing there is a finding of imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(4) The provisions of this chapter relating to permits, sureties, bonds, inspections, and enforcement, public review, and administrative and judicial

review shall be applicable to surface operations and surface impacts incident to an underground coal mine with those modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining methods.

History: C. 1953, 40-10-18, enacted by L. 1979, ch. 145, § 1; 1981, ch. 175, § 5.

40-10-19. Information provided by permittees to division — Inspections by division — Signs required at operations entrances — Violations reported by reclamation officers — Copies of records and reports available to public.

(1) For the purpose of developing, administering, and enforcing any permit under this chapter, or of determining whether any person is in violation of any requirement of this chapter, the division shall require any permittee to provide information relative to surface coal mining and reclamation operations as the division deems reasonable and necessary in the division's implementing rules and regulations.

(2) The authorized representatives of the division, without advance notice and upon presentation of appropriate credentials:

(a) Shall have the right of entry into, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under this Subsection (2) are located.

(b) May at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter. As required by Subsection 40-8-17(2), this entry and access are conditions to obtaining an approved state permit to conduct surface mining operations.

(3) The inspections by the division shall:

(a) Occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(b) Occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and

(c) Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

(4) Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the names, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(5) Each reclamation officer, upon detection of each violation of any requirement of this chapter, shall forthwith inform the operator in writing and shall report in writing the violation to the division.

(6) Copies of any records, reports, inspection materials, or information obtained under this chapter by the division shall be made immediately available to the public.

History: C. 1953, 40-10-19, enacted by L.
1979, ch. 145, § 1.

40-10-20. Civil penalty for violation of chapter — Public hearing — Contest of violation or amount of penalty — Collection — Criminal penalties — Civil penalty for failure to correct violation.

(1) Any permittee who violates any permit condition or who violates any other provision of this chapter may be assessed a civil penalty by the board, except that if the violation leads to the issuance of a cessation order under Section 40-10-22, the civil penalty shall be assessed. This penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of the penalty assessments. In determining the amount of penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(2) A civil penalty shall be assessed by the board only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing. Where the public hearing has been held, the board shall make findings of fact, and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid. When appropriate, the board shall consolidate these hearings with other proceedings under Section 40-10-22. Any hearing under this section shall be of record and shall be conducted pursuant to board rules and regulations governing the proceedings. Where the person charged with a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the board after the board has determined that a violation did occur and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

(3) Upon the issuance of a notice or order charging that a violation of this chapter has occurred, the board shall inform the operator within 30 days of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full, or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the board for placement in an escrow account. If, through administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced, the board shall within 30 days remit the appropriate amount to the person, with interest accumulated. Failure to forward the money to the board within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(4) Civil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state.

(5) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order issued under Section 40-10-22 or any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision under Subsection (2) shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(6) Whenever a corporate permittee violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection (2), any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under Subsections (1) and (5).

(7) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or any order or decision issued by the board under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(8) Any operator who fails to correct a violation for which a notice or cessation order has been issued under Subsection 40-10-22(1) within the period permitted for its correction (which period shall not end until the entry of a final order by the board, in the case of any review proceedings initiated by the operator in which the board orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.

History: C. 1953, 40-10-20, enacted by L. 1979, ch. 145, § 1; 1983, ch. 199, § 1; 1985, ch. 90, § 1; 1986, ch. 194, § 5.

Amendment Notes. — The 1985 amendment deleted former Subsections (9) and (10), which read:

"(9) Fines or penalties collected for violation of this act shall be remitted to the state treasurer for deposit in the general fund.

"(10) Refunds, in whole or in part, of any

fines or penalties, which are directed by administrative or judicial determination shall be made directly from the general fund, with interest accumulated, in accordance with Subsection 40-10-20(3)."

The 1986 amendment in Subsection (8) substituted "notice or cessation order" for "citation" and "40-10-20(1)" for "40-10-20(1)".

40-10-21. Civil action to compel compliance with chapter — Jurisdiction — Venue — Division and board as parties — Court costs — Security when temporary restraining order or injunction sought — Other rights not affected — Action for damages.

- (1) (a) Except as provided in Subsection (2), any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter against:
 - (i) the state or any other governmental instrumentality or agency to the extent permitted by the 11th Amendment to the United States Constitution or the Utah Governmental Immunity Act, Chapter 30, Title 63, which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order, or permit issued pursuant to it;
 - (ii) any person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this chapter; or
 - (iii) the division or board where there is alleged a failure of the division or board to perform any act or duty under this chapter which is not discretionary with the division or with the board.
- (b) The district courts shall have jurisdiction without regard to the amount in controversy or the citizenship of the parties.
- (2) No action may be commenced:
 - (a) under Subsection (1)(a)(i) or (ii):
 - (i) prior to 60 days after the plaintiff has given notice in writing of the violation to the division and to any alleged violator; or
 - (ii) if the attorney general has commenced and is diligently prosecuting a civil action in a court of the state to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter;
 - (b) under Subsection (1)(a)(iii) prior to 60 days after the plaintiff has given notice in writing of the action to the board, in the manner as the board prescribes by rule, except that the action may be brought immediately after the notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.
- (3) (a) Any action concerning a violation of this chapter or the rules promulgated under it may be brought only in the judicial district in which the surface coal mining operation complained of is located.
 - (b) In the action, the division and board, if not a party, may intervene as a matter of right.
- (4) (a) The court, in issuing any final order in any action brought pursuant to Subsection (1) may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines that award is appropriate.
 - (b) The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Utah Rules of Civil Procedure.
- (5) Nothing in this section may restrict any right which any person, or class of persons, has under any statute or common law to seek enforcement of any of

the provisions of this chapter and the regulations promulgated under it, or to seek any other relief, including relief against the division and board.

(6) Any person who is injured in his person or property through the violation by an operator of any rule, order, or permit issued pursuant to this chapter may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under Utah workmen's compensation laws.

History: C. 1953, 40-10-21, enacted by L. 1979, ch. 145, § 1; 1981, ch. 175, § 6; 1985, ch. 94, § 6.

Amendment Notes. — The 1985 amendment redesignated former Subsection (1) as Subsection (1)(a); divided former Subsection (1)(a) into Subsections (1)(a)(i) and (1)(a)(ii); redesignated former Subsection (1)(b) as Subsection (1)(a)(iii); designated a formerly undesignated paragraph as Subsection (1)(b); substituted "Subsection (1)(a)(iii)" for "Subsection (1)(b)" and "prescribes by rule" for "shall by

regulation prescribe" in Subsection (1)(b); substituted "concerning" for "respecting" and "rules" for "regulations" in Subsection (3)(a); divided former Subsection (4) into Subsections (4)(a) and (4)(b); substituted "may" for "shall" and "has" for "may have" in Subsection (5); deleted "regulation" after "rule" in Subsection (6); and made minor changes in phraseology and punctuation.

Cross-References. — Workers' compensation, Chapter 1 of Title 35.

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 divi-

sion 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 (1)(c), 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 board shall be requested to issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a conference is requested, the division shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the board shall immediately 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

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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 by the division under this chapter;

(ii) interferes with, hinders, or delays the division or its authorized representatives in carrying out the provisions of this chapter;

(iii) refuses to admit the authorized representatives to the mine;

(iv) refuses to permit inspection of the mine by the authorized representative;

(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 the carrying out the provisions of this chapter.

(b) The court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the 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 district court granting the relief sets it aside or modifies it.

- (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 apply to the board 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 (3)(a) 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 at least 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 written notice of the time, place, and date of it. The hearing shall be of record and shall be subject to judicial review. Within 60 days following the public hearing, the board shall issue and furnish to the permittee and all other parties to the hearing a written decision and the reasons for it, concerning 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 issued under this section or as a result of any administrative 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 administrative 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 appropriate district court within the state of Utah, 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.

History: C. 1953, 40-10-22, enacted by L.
1979, ch. 145, § 1; 1981, ch. 175, § 7.

40-10-23. Time for bringing criminal proceeding.

No criminal proceeding based upon violation of this chapter, or any rule, regulation, or order issued under this chapter, shall be commenced or maintained unless it shall have been commenced within five years from the date of the alleged violation.

History: C. 1953, 40-10-23, enacted by L.
1979, ch. 145, § 1.

40-10-24. Determination of unsuitability of lands for surface coal mining — Petition — Public hearing — Detailed statement by division.

(1) (a) The board and division, with the advice of appropriate federal, state, and local agencies, shall establish a planning process enabling objective

decisions based upon competent and scientifically sound data and information as to which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in Subsections (1)(b) and (1)(c). This designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

(b) Upon petition pursuant to Subsection (3), the board shall designate an area as unsuitable for all or certain types of surface coal mining operations if the board and division determine that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

(c) Upon petition pursuant to Subsection (3), a surface area may be designated unsuitable for certain types of surface coal mining operations if these operations will:

(i) be incompatible with existing state or local land use plans or programs;

(ii) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(iii) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and the lands to include aquifers and aquifer recharge areas; or

(iv) affect natural hazard lands in which the operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology;

and where the criteria listed in Subsections (1)(c)(i), (1)(c)(ii), (1)(c)(iii), and (1)(c)(iv) have been balanced against the economic impact of the designation in a cost-benefit analysis.

(d) Determinations of the unsuitability of lands for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the state and local levels.

(e) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this chapter, or where substantial legal and financial commitments in these operations were in existence prior to January 1, 1977.

(2) Any person having an interest which is or may be adversely affected shall have the right to petition the board to have an area designated as unsuitable for surface coal mining operations or to have this designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition the board shall hold a public hearing, after appropriate notice and publication of the date, time, and location of the hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after the hearing, the board shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons for it. If

all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(3) Prior to any land areas being designated as unsuitable for surface coal mining operations, a detailed statement shall be prepared by the division on:

- (a) the potential coal resources of the area;
- (b) the demand for coal resources; and
- (c) the impact of the designation on the environment, the economy, and the supply of coal.

(4) After August 3, 1977, and subject to valid existing rights, no surface coal mining operations, except those which exist on that date, shall be permitted:

- (a) on any lands where this activity is precluded by Public Law 95-87;
- (b) on any lands which will adversely affect any publicly-owned park or places included in the National Register of Historic Sites, unless approved jointly by the division and the federal, state, or local agency with jurisdiction over the park or the historic site;
- (c) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join this right-of-way line and except that the division may permit these roads to be relocated or the area affected to lie within 100 feet of the road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or
- (d) within 300 feet from any occupied dwelling, unless waived by the owner of same, nor within 300 feet from any public building, school, church, community, institutional building, or public park, or within 100 feet of a cemetery.

History: C. 1953, 40-10-24, enacted by L. 1979, ch. 145, § 1; 1981, ch. 175, § 8. cited in Subsection (4), enacted the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq.
Public Law 95-87. — Public Law 95-87,

40-10-25. Dedicated credits — Expenditure priorities — Eligible lands and water — Abandoned Mine Expendable Trust Fund — Transfer of funds — Investment by state treasurer.

(1) Monies received by the state from the following sources shall be deposited as nonlapsing dedicated credits to the Division of Oil, Gas, and Mining to administer a program for reclamation of abandoned mine lands. Monies appropriated from the fund shall be available without fiscal year limitation from:

- (a) grants by the secretary of the United States Department of the Interior;
- (b) donations from sources, including, but not limited to, persons, corporations, or associations;
- (c) recovered liens filed against privately-owned land; and
- (d) fines collected from violations of this chapter, or any rule or order issued under this chapter.

(2) The expenditure of monies shall reflect the following priorities:

- (a) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

(b) the protection of public health, safety, and general welfare from adverse effects of coal mining practices;

(c) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;

(d) research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;

(e) the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices; and

(f) the development of publicly-owned land adversely affected by coal mining practices, including land acquired as provided in this section for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(3) Lands and water eligible for reclamation or drainage abatement expenditures under this section are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the effective date of this chapter, and for which there is no continuing reclamation responsibility under state or federal laws.

(4) (a) Monies received by the state from the secretary of the United States Department of Interior, which are granted as special state set-aside monies in accordance with 30 U.S.C. Sec. 1232 et seq. will be deposited in a special trust fund which is created and known as the Abandoned Mine Expendable Trust Fund. The director of the Division of Oil, Gas, and Mining shall be the trustee. Granted monies, together with all interest earned on these monies, will be requested through appropriation and expended by the division after August 3, 1992, solely to accomplish the purposes set forth in Sections 40-10-25 through 40-10-28.

(b) The director of the Division of Oil, Gas, and Mining, with the concurrence of the Board of Oil, Gas, and Mining, may at any time request a transfer of funds to the division from the Abandoned Mine Expendable Trust Fund for any emergency requiring immediate reclamation.

(c) All assets of the Abandoned Mine Expendable Trust Fund shall be invested by the state treasurer in accordance with this section.

History: C. 1953, 40-10-25, enacted by L. 1979, ch. 145, § 1; 1983, ch. 199, § 2; 1985, ch. 90, § 2; 1988, ch. 30, § 3.

Amendment Notes. — The 1985 amendment substituted the first sentence of Subsection (1) for the former first sentence which read "An account is created in the general fund to be known as the 'abandoned mine reclamation account,' which is established for the purpose of providing monies to administer a program for reclamation of abandoned mine lands"; added "from" at the end of Subsection (1); deleted introductory language in Subsection (2); substituted "grants" for "granted" in Subsection (1)(a); deleted former Subsection (2)(b); re-

designated former Subsections (2)(c) and (2)(d) as Subsections (1)(b) and (1)(c); substituted "donations" for "donated" in Subsection (1)(b); deleted "through" after "recovered" in Subsection (1)(c); added Subsection (1)(d); redesignated former Subsection (3) as Subsection (2) and rewrote that subsection; redesignated former Subsection (4) as Subsection (3); and made minor changes in phraseology and punctuation.

The 1988 amendment, effective April 25, 1988, added Subsection (4).

"Effective date of this chapter". — The phrase "effective date of this chapter," referred

to in Subsection (3), means March 20, 1979, the effective date of Laws 1979, Chapter 145.

40-10-26. State reclamation plan and annual projects submitted to secretary of interior — Contents of plan — Annual support and implementation requests — Costs for proposed projects.

(1) The division will submit to the secretary of the interior a state reclamation plan and annual projects to carry out the purposes of this section.

(2) The state reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform this work in conformance with the provisions of this chapter.

(3) The division shall have the authority to submit an annual application for the support of the state program and implementation of specific reclamation projects to the secretary of the interior. These annual requests shall include such information as may be requested by the secretary.

(4) The division shall have the authority to provide annual and other reports required by the secretary of the interior to accompany the annual request for support required in Subsection (3).

(5) The costs for each proposed project under this section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

History: C. 1953, 40-10-26, enacted by L. 1979, ch. 145, § 1.

40-10-27. Entry upon land adversely affected by past coal mining practices — Conducting of studies or exploratory work — State acquisition of land — Lien — Waste disposal fund — Water pollution control and treatment plants.

(1) If the board, after notice and hearing, makes a finding of fact that:

(a) Land or water resources have been adversely affected by past coal mining practices;

(b) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken;

(c) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available, or the owners will not give permission for the state or its political subdivisions, their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

Then, upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of

general circulation in the county in which the land lies, the agents, employees, or contractors of the division, shall have the right to enter the property adversely affected by past coal mining practices and any other property to have access to that property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass on it. The monies expended for this work and the benefits accruing to the premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in these premises for any alleged damages by virtue of the entry; but this provision is not intended to create new rights of action or eliminate existing immunities.

(2) The agents, employees, or contractors of the division shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of these adverse effects. This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass on it.

(3) The state may acquire any land by purchase, donation, or condemnation which is adversely affected by past coal mining practices if the board, after notice and hearing, determines that acquisition of this land is necessary to successful reclamation and that:

(a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

(b) (i) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(ii) Acquisitions of coal refuse disposal sites and all coal refuse on same will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(4) Title to all lands acquired under this section shall be in the name of the state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

(5) (a) Where land acquired under this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the division, in conjunction with the Division of State Lands [Division of State Lands and Forestry], may sell this land by public sale under a system of competitive bidding, at not less than fair market value, and under such other regulations promulgated to insure that the land is put to proper use consistent with local and state land use plans.

(b) The state, when requested after appropriate public notice, shall hold a public hearing with the appropriate notice, in the county or counties or the appropriate political subdivisions of the state in which lands acquired under this section are located. The hearing shall be held at a

time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(6) The state, through the division and the Division of State Lands [Division of State Lands and Forestry], shall have the authority to accept lands acquired and reclaimed by the secretary of the interior pursuant to Section 407(h) of Public Law 95-87. In addition, the division shall have the authority to accept grants from the Secretary to carry out the purposes of Section 407(h) of Public Law 95-87.

(7) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately-owned land, the division shall itemize the monies so expended and may file a statement of same in the office of the county recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the monies so expended shall result in a significant increase in property value. This statement shall constitute a lien upon the land described in it. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed.

(8) The landowner may proceed to petition within 60 days after the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement provided for in Subsection (7). Any party aggrieved by the decision may appeal as provided by law.

(9) The lien provided in this section shall be recorded in the office of the county recorder of the county in which the land lies. The statement shall constitute a lien upon the land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(10) (a) The division is authorized to fill any voids, seal any abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the division determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.

(b) The division may make expenditures and carry out the purposes of this section without regard to the provisions of Subsection 40-10-25(4) [Subsection 40-10-25(3)] only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.

(c) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes

from these operations by filling voids and sealing tunnels may be eligible for funding if the disposal of these wastes meets the purposes of this section.

(d) The division may acquire by purchase, donation, easement, or otherwise such interests in land as it determines necessary to carry out the provisions of this section.

(11) Not later than January 1st after this chapter becomes effective and annually thereafter, the division shall report to the Legislature and the United States Congress on operations under the fund, together with its recommendations as to future use of the fund.

(12) (a) The division may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this chapter, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this section.

(b) The division, in conjunction with appropriate state agencies as determined in implementing regulations, shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment of water pollution may be dependent upon the ultimate use of the water; but the above provisions of this subsection shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq., as amended) and no control or treatment under this section shall in any way be less than that required under the Federal Water Pollution Control Act. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

(c) The division may transfer funds to other appropriate state agencies, in order to carry out the reclamation activities authorized by this chapter.

History: C. 1953, 40-10-27, enacted by L. 1979, ch. 145, § 1.

Division of State Lands and Forestry. — Laws 1988, Chapter 121 repealed § 65-1-2.1, which created the Division of State Lands, referred to in Subsections (5)(a) and (6), and enacted § 65A-1-4 to create the Division of State Lands and Forestry. Section 63-34-3, as amended by Laws 1988, Chapter 121 and by Laws 1988, Chapter 169, also creates the Division of State Lands and Forestry.

Federal Water Pollution Control Act. — The Federal Water Pollution Control Act, cited in Subsection (12)(b), is now codified as 33 U.S.C. § 1251 et seq.

Compiler's Notes. — Section 407(h) of Public Law 95-87, cited in Subsection (6), is codified as 30 U.S.C. § 1237 (h).

The former provisions of Subsection 40-10-25(4), cited in Subsection (10)(b), now appear in Subsection 40-10-25(3).

40-10-28. Recovery of reclamation costs — Lien against reclaimed land.

(1) All reclamation costs of each project shall be recovered to the extent possible, taking into consideration the objectives of the project and the criteria under which the project was selected for reclamation work in accordance with the following:

(a) All possible reclamation costs shall be recovered at the time of first sale of land following reclamation as follows:

(i) Whenever reclaimed land is sold at a value higher than that at which the unreclaimed land was appraised immediately prior to rec-

lamation, the difference between the pre and post reclamation values shall be payable to the fund to mitigate or offset the cost of the reclamation program; and

(ii) When land is to be sold to a state or local government for public purposes, the amount of the sale price may be less than the market value after reclamation but may not be less than the actual costs of reclamation.

(b) (i) Special charges for use of land may be levied, including recreation fees, leases, livestock grazing fees, or special lawful uses. These fees may be waived by the board when deemed to be to the public benefit.

(ii) These user fees, however, shall be charged to all users of the reclaimed lands which result in financial or personal benefits to persons, corporations, or profit-making organizations.

(iii) All fees collected, less operating and maintenance expenses, shall be redeposited in the fund.

(2) (a) The division shall place a lien against reclaimed land at the market value of which has increased as a result of the reclamation work, except where the surface owner neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation work.

(b) The board may waive the requirement of a lien where land is owned by a state, local government, or municipality or when owned and operated for a charitable public purpose by a non-profit charitable organization.

(c) The amount of the lien shall consist of the monies expended for the reclamation work but shall not exceed the resulting increase in the market value of the reclaimed land as determined by an independent appraiser.

(d) A written statement of monies expended for the reclamation work, together with a notarized appraisal of an independent appraiser of the market value of the land before and after the reclamation work, shall within six months after completion of the reclamation work, be filed in the office of the county recorder of the county in which the land lies.

History: C. 1953, 40-10-28, enacted by L.
1979, ch. 145, § 1.

40-10-29. Other enforcement and protection rights unaffected — Operator to replace adversely affected water supply of legitimate users.

(1) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.

(2) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where this supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

History: C. 1953, 40-10-29, enacted by L. 1979, ch. 145, § 1.

40-10-30. Judicial review of rules or orders.

(1) An appeal from a rule or order of the board shall be a trial on the record and is not a trial de novo. The court shall set aside the board action if it is found to be:

- (a) unreasonable, unjust, arbitrary, capricious, or an abuse of discretion;
- (b) contrary to constitutional right, power, privilege, or immunity;
- (c) in excess of statutory jurisdiction, authority, or limitations;
- (d) not in compliance with procedure required by law;
- (e) based upon a clearly erroneous interpretation or application of the law; or
- (f) as to an adjudicative proceeding, unsupported by substantial evidence on the record.

(2) An action or appeal involving any provision of this chapter, or a rule or order shall be determined as expeditiously as feasible. The trial court shall determine the issues on both questions of law and fact and shall affirm or set aside the rule or order, enjoin or stay the effective date of agency action, or remand the cause to the board for further proceedings. Judicial review of disputed issues of fact shall be confined to the agency record. The court may, in its discretion, receive additional evidence for good cause shown.

(3) Review of the adjudication of the district court is by the Supreme Court.

History: C. 1953, 40-10-30, enacted by L. 1985, ch. 94, § 7; 1986, ch. 47, § 24. Amendment Notes. — The 1986 amendment substituted "is not" for "not be considered" in Subsection (1) and added Subsection (3).

40-10-31. Chapter's procedures supersede Chapter 46b, Title 63.

The provisions of this chapter relating to agency adjudicative procedures before the board or division supersede the procedures and requirements of Chapter 46b, Title 63, only until and unless the appropriate federal authority approves Chapter 46b, Title 63, for the governance of the board as to this chapter.

History: C. 1953, 40-10-31, enacted by L. 1987, ch. 161, § 128. Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

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