

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.

R647-6. Inspection and Enforcement: Division Authority and Procedures.

R647-6-101. General Information on Authority and Procedures.

(1) Enforcement Authority. Nothing in the Utah Mined Land Reclamation Act will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-8-8, 40-8-9 and 40-8-9.1 of the Utah Mined Land Reclamation Act.

(2) Inspection Program. The Division will conduct inspections of each mining operation and reclamation under its jurisdiction for the purpose of enforcing the provisions of Title 40, Chapter 8.

2.11. Division representatives shall be allowed to enter upon and through any minerals mining operation and reclamation without advance notice. Division Representatives need to check in on site or make an attempt to contact the permittee or operator, if available, prior to proceeding through the site.

2.12. Division representatives shall be allowed to inspect any monitoring equipment or method of exploration, operation or reclamation and have access to and may copy any records required under the Utah Mined Land Reclamation Act.

(3) Compliance Conference.

3.11. A permittee or operator may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice at any mining operation and reclamation. Any such conference will not constitute an inspection within the meaning of Section 40-8-9 and R647-6-101.2.

3.12. The Division may accept or refuse any request to conduct a compliance conference under R647-6-101.3.11. A conference will be considered an inspection if a condition or practice exists which is described in R647-6-102.1.11.111 or 1.11.112.

3.13. The authorized representative at any compliance conference will review such conditions and practices in order to advise whether any such condition or practice is, or may become a violation of any requirement of the Utah Mined Land Reclamation Act or any applicable permit or exploration approval.

3.14. Neither the holding of a compliance conference under this section nor any statement given by the authorized representative at such a conference will affect:

3.14.111. Any rights or obligations of the Division or of the permittee or operator with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

3.14.112. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R647-6-102. Provisions of State Enforcement.

1. Cessation Orders.

1.11. The Division will immediately order a cessation of mining operations and reclamation or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the Utah Mined Land Reclamation Act, or any condition of a permit under the Utah Mined Land Reclamation Act, which:

1.11.111. Creates an imminent danger to the health or safety of the public; or

1.11.112. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

1.12. Mining operations and reclamation conducted by any person without a valid permit constitute a condition or practice described in R647-6-102.1.111 or 1.11.112.

1.13. If the cessation ordered under R647-6-102.1.11 will not completely abate the conditions described in R647-6-102.1.11.111 or 1.11.112 in the most expeditious manner physically possible, the Division will impose affirmative obligations on the permittee or operator to abate the violation. The order will specify the time by which abatement will be accomplished.

1.14. When a notice of violation has been issued under R647-6-102.2 and the permittee or operator fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of mining operations and reclamation, or of the portion relevant to the violation. A cessation order issued under R647-6-102.1.14 will require the permittee or operator to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

1.15. A cessation order issued under R647-6-102.1.11 or R647-6-102.1.14 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

1.15.111. The nature of the violation;

1.15.112. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

1.15.113. The time established for abatement, if appropriate, including the time for meeting any interim steps;

1.15.114. A reasonable description of the portion of the mining operation and reclamation to which it applies; and

1.15.115. That the order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

1.16. Reclamation and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided.

1.17. The Division may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee or operator.

1.18. The Division will terminate a cessation order by written notice to the permittee or operator, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations under R647-7.

2. Notices of Violation.

2.11. When on the basis of any Division inspection the Division determines that there exists a violation of the Utah Mined Land Reclamation Act or any condition of a permit required by the Utah Mined Land Reclamation Act, which does not create an imminent danger or harm for which a cessation order must be issued under R647-6-102.1, the Division will issue a notice of violation to the permittee or operator fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

2.12. A notice of violation issued under R647-6-102.2 will be in writing, signed by the authorized representative of the Division, and will set forth with reasonable specificity:

2.12.111. The nature of the violation;

2.12.112. The remedial action required, which may include interim steps;

2.12.113. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

2.12.114. A reasonable description of the portion of the mining operation or reclamation to which it applies.

2.13. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee or operator. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee or operator that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R647-6-102.2.16. An extended abatement date pursuant to this section will not be granted when the permittee or operator's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee or operator in completing the remedial action required.

2.14. If the permittee or operator fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R647-6-102.1.14.

2.15. The Division will terminate a notice of violation by written notice to the permittee or operator, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Division to assess civil penalties for those violations under R647-7.

2.16. Circumstances which may qualify a mining operation and reclamation for an abatement period of more than 90 days are:

2.16.111. Where good cause is shown by the permittee or operator;

2.16.112. Where climatic conditions preclude complete abatement within 90 days;

2.16.113. Where due to climatic conditions, abatement within 90 days would clearly cause more environmental harm than it would prevent; or

2.16.114. Where the permittee's or operator's action to abate the violation within 90 days would violate safety standards established by the Mine Safety and Health Act of 1977.

2.17. Other requirements on abatement times extended beyond 90 days.

2.17.111. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

2.17.112. The permittee or operator will have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under R647-6-102.2.16 and R647-6-102.2.17.

2.17.113. Any determination made under R647-6-102.2.13 will contain a right of appeal pursuant to R647-5.

3. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

3.11. A notice of violation, cessation order, or order to show cause will be served on the permittee or operator promptly after issuance by one of the following methods:

3.11.111. Personal service, in accordance with the Utah Rules of Civil Procedure. Service shall be effective on the date of personal service.

3.11.112. Delivery by United States mail or by courier service, provided the person being served signs a document indicating receipt. Service shall be complete on the date the receipt is signed.

3.11.113. First posting a copy of the notice at a conspicuous location at the mine site or offices of the place of violation, and thereafter by personally delivering or mailing a copy by certified mail to the permittee or operator at the last address provided to the Division. Service shall be complete upon personal delivery or three days after the date of mailing.

3.12. Service on the permittee or operator shall be sufficient if service is made upon:

3.12.111. an officer of a corporation,

3.12.112. the person designated by law for service of process, or the registered agent for the corporation,

3.12.113. an owner, or partner of an entity other than a corporation, or

3.12.114. a person designated in writing by the permittee or operator as a person authorized to receive notice from the Division for matters pertaining to the mining operation and reclamation.

3.13. Proof of Service.

3.13.111. Proof of personal service shall be made in accordance with the provisions of the Utah Rules of Civil Procedure,

3.13.112. Proof of service by certified mail or courier shall be made by obtaining a copy of the receipt signed by the recipient.

3.13.113. Proof of posting, or personal delivery may be made by a signed written statement of the person effecting posting, or personal delivery stating the date, time, and place of posting. In addition, if personal delivery, the person to whom the notice was delivered.

4. Stop Work Conference.

4.11. Except as provided in R647-6-102.4.12 a notice of violation or cessation order which requires cessation of mining, will expire within 30 days after it is served unless a Stop Work Conference, under the rules of informal process (R645-5), has been held within that time. The Stop Work Conference will be held within 5 days of request, at or reasonably close to the mine site so that the site may be viewed during the conference or at any other location acceptable to the Division and the permittee or operator. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division and permittee or operator. Expiration of a notice or order will not affect the Division's right to assess civil penalties for the violations mentioned in the notice or order under R647-7.

4.12. A notice of violation or cessation order will not expire as provided in R647-6-4.11, if the condition, practice or violation in question has been abated or if the Stop Work Conference has been waived, or if, with the consent of the permittee or operator, the conference is held upon agreement later than 30 days after the notice or order was served. For purposes of R647-6-4.12:

4.12.111. The conference will be deemed waived if the permittee or operator:

4.12.111.A. Is informed, by written notice served in the manner provided in R647-6-102.3, that he or she will be deemed to have waived a conference unless he or she requests one within 30 days after service of the notice; and

4.12.111.B. Fails to request a conference within that time;

4.12.112. The written notice referred to in R647-6-4.12.111.A., will be served no later than five days after the notice or order is served on the permittee or operator; and

4.12.113. The permittee or operator will be deemed to have consented to an extension of the time for holding the conference if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

4.13. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the Stop Work Conference to the permittee or operator.

4.14. The Division will also post notice of the conference at the Division office closest to the mine site.

4.15. A Stop Work Conference will be conducted by a representative of the Division who may accept oral or written arguments and any other relevant information from any person attending.

4.16. Within five days after the close of the conference, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to the permittee or operator.

4.17. The granting or waiver of a conference will not affect the right of any person to have a conference in R647-7-106 or to have a formal review under Subsection 40-8-9(5). No evidence as to statements made or evidence produced at a Stop Work Conference will be introduced as evidence or to impeach a witness at formal review proceedings of that matter before the Board.

4.17.111. Any order or decision issued by the Division as a result of a conference as provided for under Subsection 40-8-9(5) and R647-6-102 including an order upholding the cessation order shall be a modification of the cessation order.

5. Inability to Comply.

5.11. No cessation order or notice of violation issued under R647-6 may be vacated because of inability to comply.

5.12. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R647-7 and of the duration of the suspension of a permit under R647-6.

KEY: minerals reclamation

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