1988

Title 40 Chapter 01-08: Mining Claims to Reclamation - 1988

Utah Code Annotated

TITLE 40

MINES AND MINING

Chapter
1. Mining Claims.
2. Coal Mines.
3. Weighing Coal at Mines.
4. Natural Gas [Repealed].
5. Miscellaneous Safety Provisions.
6. Board and Division of Oil, Gas and Mining.
7. Oil and Gas Compact.
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CHAPTER 1

MINING CLAIMS

40-1-1. Lode claims — Size and shape — Discovery necessary.

A lode mining claim, whether located by one or more persons, may equal, but shall not exceed, 1,500 feet in length along the vein or lode and may extend 300 feet on each side of the middle of the vein at the surface, except where adverse rights render a lesser width necessary. The end lines of each claim must be parallel. No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located.

History: R.S. 1898, § 1495; L. 1899, ch. 14, § 1; C.L. 1907, § 1495; C.L. 1917, § 3890; R.S. 1933 & C. 1943, 55-1-1.

Cross-References. — Actions to quiet title, § 78-40-1 et seq.

Partition of claims, §§ 78-39-12, 78-39-13.

Proof of custom in actions on mining claims, § 78-40-10.

Right of entry pending action for purposes of action, § 78-40-6.

Temporary injunction in actions involving mining claims, § 78-40-11.

Trespass on mining claim, limitation of actions, § 78-12-26.

NOTES TO DECISIONS

ANALYSIS

Discovery.
Location and filing of claim.
Words and phrases defined.

Discovery.

The question of whether there is a discovery of minerals sufficient to meet statutory requirements is one of fact and it is essential only that the discovery be of such significance that a practical, experienced miner would deem it advisable to pursue the vein or "lead." Rummell v. Bailey, 7 Utah 2d 137, 320 P.2d 653 (1958).

The point of discovery must be located upon open public land and when the discovery point is located on private patented land the claim is void and not amendable. Cram v. Church, 9 Utah 2d 169, 340 P.2d 1116 (1959).

Location and filing of claim.

One who files a lode mining claim for land suitable only for placer mining cannot, after more than twenty years' actual possession and working of claim, involving considerable expense and improvement of property, be deprived of possession by one who surreptitiously locates and files placer mining claim covering land, particularly in view of federal statute entitling claimant to patent after possession and working of claim for period of limitation provided by state law. Springer v. Southern Pac. Co., 67 Utah 590, 248 P. 819 (1926).

Words and phrases defined.

"Veins or lodes" are lines or aggregations of metal imbedded in quartz or other rock in place, consisting of a strip of mineral-bearing rock within defined boundaries in the general mass of the mountain, which must be continuous and without interruption, bounded by country rock mineralized to no greater extent than the general condition of the vicinity. Grand Cent. Mining Co. v. Mammoth Mining Co., 29 Utah 490, 83 P. 648 (1905), dismissed for want of jurisdiction, 213 U.S. 72, 29 S. Ct. 413, 53 L. Ed. 702 (1909).

Rock or matter of any kind, in order to constitute a "vein or lode," must be metalliferous and contain such mineral value as will distinguish it from the country rock, especially where no well-defined walls appear. Grand Cent. Mining Co. v. Mammoth Mining Co., 29 Utah 490, 83 P. 648 (1905), dismissed for want of jurisdiction, 213 U.S. 72, 29 S. Ct. 413, 53 L. Ed. 702 (1909).

The term "mines" is not confined to subterranean excavations or workings, nor is the term "minerals" confined to metalliferous ores. Nephi Plaster & Mfg. Co. v. Juab County, 33 Utah 114, 93 P. 53, 14 L.R.A. (n.s.) 1043 (1907).

Gypsum is mineral and constitutes mineral deposit under mineral laws. Nephi Plaster & Mfg. Co. v. Juab County, 33 Utah 114, 93 P. 53, 14 L.R.A. (n.s.) 1043 (1907).

COLLATERAL REFERENCES

Utah Law Review. — Government Initiated Contests Against Mining Claims, 1968 Utah L. Rev. 102.

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

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 11 et seq.

C.J.S. — 58 C.J.S. Mines and Minerals § 4 et seq.

A.L.R. — Breach of obligation to drill exploratory oil or gas wells, right and measure of recovery for, 4 A.L.R.3d 284.

Grant, lease, exception, or reservation of oil and/or gas rights as including oil shale, 61 A.L.R.3d 1109.

Key Numbers. — Mines and Minerals ⇐ 9 et seq.

40-1-2. Discovery monument — Notice of location — Contents.

The locator at the time of making the discovery of such vein or lode must erect a monument at the place of discovery, and post thereon his notice of location which shall contain:

(1) The name of the claim.

(2) The name of the locator or locators.

(3) The date of the location.

(4) If a lode claim, the number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width claimed on each side of the center of the vein, and the general course of the vein or lode as near as may be, and such a description of the claim, located by reference to some natural object or permanent monument, as will identify the claim.

(5) If a placer or mill site claim, the number of acres or superficial feet claimed, and such a description of the claim or mill site, located by reference to some natural object or permanent monument, as will identify the claim or mill site.

History: R.S. 1898, § 1496; L. 1899, ch. 14, § 2; C.L. 1907, § 1496; C.L. 1917, § 3891; R.S. 1933 & C. 1943, 55-1-2.

NOTES TO DECISIONS

Analysis

Conflicting claims of land and mineral patentee.
Determination of location and strike.
Differences in recorded description and actual location.
Location notice.

Conflicting claims of land and mineral patentee.

Mineral patent is conclusive (as against collateral attack) of valid location of claim prior to its issuance, but not as to particular date of location; and in order to have mineral patent relate back to date of location where land patent (nonmineral) was issued to another prior to issuance of mineral patent, latter patentee must prove valid location prior to date of nonmineral patent. Gibbons v. Frazier, 68 Utah 182, 249 P. 472 (1926).

Land patent (nonmineral) issued years prior to mineral patent is superior thereto even though attempted location was made prior to issuance of nonmineral patent, where location was insufficient and invalid because of lack of proof of discovery of mineral and bounding of claim. Gibbons v. Frazier, 68 Utah 182, 249 P. 472 (1926).

Determination of location and strike.

In determining the location and strike of a vein, the geological features of the adjacent country, so far as in evidence, will be considered by the court. Grand Cent. Mining Co. v. Mammoth Mining Co., 29 Utah 490, 83 P. 648 (1905), dismissed for want of jurisdiction, 213 U.S. 72, 29 S. Ct. 413, 53 L. Ed. 702 (1909).

Differences in recorded description and actual location.

Minor differences in the description of a claim as recorded from the actual location will not render a claim invalid if there is sufficient compliance with the statutory requirements both at the place of location and as filed with the county recorder. Powell v. Atlas Corp., 615 P.2d 1225 (Utah 1980).

Location notice.

A notice of location that describes the ground in such a way as to be incapable of identification is insufficient. Darger v. Le Sieur, 9 Utah 192, 33 P. 701 (1893).

In dispute over locations of mineral lands, where defendant's location notice posted and filed of record failed to describe land intended to be claimed, and no amended location notice was filed until after plaintiffs had located land, because plaintiffs had met requirements of both federal and state statutes relative to claim, they were entitled to areas in dispute. Miehlich v. Tintic Std. Mining Co., 60 Utah 569, 211 P. 686 (1922).

Priority of location cannot be maintained by amendment if in fact the amendment amounts to a new and different location. However, neither niceties of description in original notices of location nor more than reasonable accuracy in the staking of claims is required to effectuate a valid location. Prospectors are not engineers nor does the law expect them to be. However, the law does require sufficient detail and accuracy in the notice as recorded to allow location of the claim upon reasonable effort.

Cranford v. Gibbs, 123 Utah 447, 260 P.2d 870 (1953).

Plaintiff's placer claim notices definitely singled out a particular area with the aid of estimated distances and with references to natural features, and defendants could not rely upon technical deficiencies to defeat the claim. Fuller v. Mountain Sculpture, 6 Utah 2d 385, 314 P.2d 842 (1957).

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 39 et seq.

C.J.S. — 58 C.J.S. Mines and Minerals § 42.

Key Numbers. — Mines and Minerals ⇐ 17(1).

40-1-3. Boundaries to be marked.

Mining claims and mill sites must be distinctly marked on the ground so that the boundaries thereof can be readily traced.

History: R.S. 1898, § 1497; L. 1899, ch. 14, § 3; C.L. 1907, § 1497; C.L. 1917, § 3892; R.S. 1933 & C. 1943, 55-1-3.

NOTES TO DECISIONS

ANALYSIS

Courses and distances.
Requisites of location of placer claim.
What constitutes valid location.

Courses and distances.

The courses and distances in field notes, and in patent of mining claim, were not conclusive of question of true location of established monuments of official survey. Grand Cent. Mining Co. v. Mammoth Mining Co., 36 Utah 364, 104 P. 573, 1912A Ann. Cas. 254 (1909).

Requisites of location of placer claim.

Requisites of valid location of placer claim are: (1) discovery of mineral within the claim; (2) the marking of the location on the ground so that its boundaries may be readily traced. Gibbons v. Frazier, 68 Utah 182, 249 P. 472 (1926).

What constitutes valid location.

Proper staking or marking of mining claim completed valid location of ground, and thereafter it was not incumbent on claimant, as matter of law, to preserve standing of stakes against meddlesome persons or trespassers in order to preserve its rights as against subsequent locator seeking to acquire mining rights in premises. Miehlich v. Tintic Std. Mining Co., 60 Utah 569, 211 P. 686 (1922).

COLLATERAL REFERENCES

C.J.S. — 58 C.J.S. Mines and Minerals § 48.

Key Numbers. — Mines and Minerals ⇐ 20(1).

40-1-4. Copy of location notice to be recorded.

Within thirty days after the date of posting the location notice upon the claim the locator or locators, or his or their assigns, must file for record in the office of the county recorder of the county in which such claim is situated a substantial copy of such notice of location. Such notice of location shall not be abstracted unless a subsequent conveyance affecting the same property is filed for record, whereupon it shall be abstracted.

History: R.S. 1898, § 1498; L. 1899, ch. 14, § 4; C.L. 1907, § 1498; 1909, ch. 56, § 1; C.L. 1917, § 3893; R.S. 1933 & C. 1943, 55-1-4.

Cross-References. — County recorder, powers and duties, § 17-21-1 et seq.

Fee for recording, § 21-2-3.

Recording conveyances generally, § 57-3-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Actual notice.
Failure to record.

Actual notice.

Actual notice of an amended claim and another's exclusive possession is equivalent to valid record notice. Atherley v. Bullion Monarch Uranium Co., 8 Utah 2d 362, 335 P.2d 71 (1959).

Failure to record.

A locator's title to a claim which was properly initiated under the mining laws was not forfeited by a failure to record. Atherley v. Bullion Monarch Uranium Co., 8 Utah 2d 362, 335 P.2d 71 (1959).

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 53 et seq.

C.J.S. — 58 C.J.S. Mines and Minerals § 56.

Key Numbers. — Mines and Minerals ⇐ 22.

40-1-5. Assessment work on group claims.

Every person owning a group of claims and doing the development or assessment work for the group at one point shall post a notice upon each claim at the discovery monument stating where such work is being done, and also post a notice at the entrance of the workings where such work is done, stating the names of the claims for which the work is done.

History: R.S. 1898, § 1499; L. 1899, ch. 14, § 5; C.L. 1907, § 1499; C.L. 1917, § 3894; R.S. 1933 & C. 1943, 55-1-5.

NOTES TO DECISIONS

Notice by affidavit.

It is not necessary that the work be performed openly and notoriously in order to give notice to subsequent claimants that it is being done. Notice that the work is being done in accordance with the assessment statute is given in the filing of the affidavit in the office of the county recorder and posting. Chamberlain v. Montgomery, 1 Utah 2d 31, 261 P.2d 942 (1953).

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 68 et seq.

C.J.S. — 58 C.J.S. Mines and Minerals § 67.

Key Numbers. — Mines and Minerals ⇐ 23(1).

40-1-6. Affidavit of work done.

The owner of any quartz lode or placer mining claim who shall do or make, or cause to be done or made, the annual labor or improvements required by the laws of the United States, in order to prevent a forfeiture of the claim must, within thirty days after the completion of such work or improvements, file in the office of the county recorder of the county in which such claim is located his affidavit, or affidavits of the persons who performed or directed such labor or made or directed such improvements, showing:

(1) The name of the claim and where situated.

(2) The number of days' work done and the character and value of the improvements placed thereon.

(3) The date or dates of performing such labor and making such improvements, and number of cubic feet of earth or rock removed.

(4) At whose instance or request such work was done or improvements made.

(5) The actual amount paid for such labor and improvements, and by whom paid.

(6) That the notices were posted as required by Section 40-1-5.

Such affidavits, or duly certified copies thereof, shall be prima facie evidence of the facts therein stated.

History: R.S. 1898, § 1500; L. 1899, ch. 14, § 6; C.L. 1907, § 1500; C.L. 1917, § 3895; R.S. 1933 & C. 1943, 55-1-6.

Cross-References. — Fee for recording affidavits of labor, § 21-2-3.

NOTES TO DECISIONS

Proof of assessment work.

The filing of the affidavit required by this section supports a finding that the work on a claim has been done in accordance with the requirements of 30 U.S.C. § 28 of the Mining Laws of the United States. Chamberlain v. Montgomery, 1 Utah 2d 31, 261 P.2d 942 (1953).

COLLATERAL REFERENCES

C.J.S. — 58 C.J.S. Mines and Minerals § 75.

Key Numbers. — Mines and Minerals ⇦ 23(4).

40-1-7. District recorders — Office abolished.

From and after the termination of the office of any mining district recorder now holding office in this state such district shall be abolished and such office shall become vacant.

History: Code Report; R.S. 1933 & C. 1943, 55-1-7.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals §§ 52 to 56.

C.J.S. — 58 C.J.S. Mines and Minerals § 56.

Key Numbers. — Mines and Minerals ⇦ 22.

40-1-8. Vacancy and removal — County recorder to receive records.

Whenever there is a vacancy in the office of recorder of any mining district, or the person holding such office shall remove from the district leaving therein no qualified successor in office, or whenever from any cause there is no person in such district authorized to retain the custody and give certified copies of the records, it shall be the duty of the person having custody of the records to deposit the same in the office of the county recorder of the county in which such mining district, or the greater part thereof, is situated, and the county recorder shall take possession of such records, and is hereby authorized to make and certify copies therefrom, including any other copies of records and papers in his office pertaining to mining claims, and such certified copies shall be receivable in evidence in all courts and before all officers and tribunals. The production of a certified copy so made shall be, without further proof, evidence that such records were properly in the custody of the county recorder.

History: R.S. 1898, § 1502; L. 1899, ch. 14, § 15; C.L. 1907, § 1506x2; C.L. 1917, § 3904; R.S. 1933 & C. 1943, 55-1-8.

Cross-References. — County recorder, powers and duties, § 17-21-1 et seq.

40-1-9. County recorder may certify district records.

Where books, records and documents pertaining to the office of mining district recorder have been deposited in the office of any county recorder he is authorized to make and certify copies therefrom, and such certified copies shall be receivable in all tribunals and before all officers of this state in the same manner and to the same effect as if such records had been originally filed or made in the office of the county recorder.

History: L. 1899, ch. 14, § 11; C.L. 1907, § 1505; C.L. 1917, § 3900; R.S. 1933 & C. 1943, 55-1-9.

40-1-10. Certified copies of records evidence.

Copies of notices of location of mining claims, mill sites and tunnel sites heretofore recorded in the records of the several mining districts, and copies of the mining rules and regulations in force therein and recorded, when duly certified by the district or county recorder, shall be receivable in all tribunals and before all officers of this state as prima facie evidence.

History: L. 1899, ch. 14, § 9; C.L. 1907, § 1504; C.L. 1917, § 3899; R.S. 1933 & C. 1943, 55-1-10.

Cross-References. — Entries in official records as evidence, § 78-25-3.

Public and private writings, admissibility, § 78-26-1 et seq.

40-1-11. Interfering with notices, stakes or monuments — Penalty.

Any person who willfully or maliciously tears down or defaces a notice posted on a mining claim, or takes up or destroys any stake or monument marking any such claim, or interferes with any person lawfully in possession of such claim, or who alters, erases, defaces or destroys any record kept by a mining district or county recorder, is guilty of a misdemeanor, and shall be punished by a fine of not less than $25 nor more than $100, or by imprisonment for not less than ten days nor more than six months, or by both such fine and imprisonment.

History: R.S. 1898 & C.L. 1907, § 1535; C.L. 1917, § 3937; R.S. 1933 & C. 1943, 55-1-11.

Cross-References. — Trespass, § 76-6-206.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 52.
C.J.S. — 58 C.J.S. Mines and Minerals § 45.

Key Numbers. — Mines and Minerals ⇐ 19(1).

40-1-12. Damages for wrongful removal of ores.

When damages are claimed for the extraction or selling of ore from any mine or mining claim and the defendant, or those under whom he claims, holds, under color of title adverse to the claims of the plaintiff, in good faith, then the reasonable value of all labor bestowed or expenses incurred in necessary developing, mining, transporting, concentrating, selling or preparing said ore, or its mineral content, for market, must be allowed as an offset against such damages; provided, however, that any person who, wrongfully entering upon any mine or mining claim and carrying away ores therefrom, or wrongfully extracting and selling ores from any mine, having knowledge of the existence of adverse claimants in any mine or mining claim, and without notice to them, knowingly and willfully trespasses in or upon such mine or mining claim and extracts or sells ore therefrom shall be liable to the owners of such ore for three times the value thereof without any deductions either for labor bestowed or expenses incurred in removing, transporting, selling or preparing said ore, or its mineral content for market.

History: R.S. 1898 & C.L. 1907, § 1536; C.L. 1917, § 3938; R.S. 1933, 55-1-12; L. 1937, ch. 63, § 1; C. 1943, 55-1-12.

NOTES TO DECISIONS

ANALYSIS

Application of statute.
Cause of action.

Application of statute.

Purpose of statute is to impose penalty upon and discourage the knowing and willful trespass upon mining claims and the wrongful extracting of ore therefrom; statute was inapplicable to party in lawful occupation of mine under valid lease where there was a bona fide dispute as to right of possession. Even Odds, Inc. v. Nielson, 22 Utah 2d 49, 448 P.2d 709 (1968).

Cause of action.

This section does not give a lessee a statutory right to recover damages for the wrongful taking of minerals, no cause of action being delineated herein, but only sets forth the measure of damages to be used for such a claim. Benton v. State, Div. of State Lands & Forestry, 709 P.2d 362 (Utah 1985).

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — The Utah Law of Oil and Gas, 7 J. Energy L. & Pol'y 191 (1986).

C.J.S. — 87 C.J.S. Trespass §§ 134 to 137.
Key Numbers. — Trespass ⇦ 60.

40-1-13. Repealed.

Repeals. — Laws 1987, ch. 161, § 314 repeals § 40-1-13, as enacted by Laws 1935, ch. 45, § 1, relating to prospecting permits, effective January 1, 1988.

CHAPTER 2
COAL MINES

40-2-1. Inspection of mines.

For the purpose of securing an efficient and thorough inspection of all coal and hydrocarbon mines within the state, coal mine inspection and all matters relating thereto shall be under the control of the Industrial Commission.

History: C.L. 1917, § 3076 [9]; L. 1921, ch. 67, § 1; R.S. 1933 & C. 1943, 55-2-1.

Cross-References. — Industrial Commission, § 35-1-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 1 et seq.
C.J.S. — 58 C.J.S. Mines and Minerals § 229 et seq.

Key Numbers. — Mines and Minerals ⇦ 92.9.

Application of statute.

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Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 1 et seq.

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

Key Numbers. — Mines and Minerals ⇐ 92.9.

40-2-1.2. Procedures — Adjudicative proceedings.

The Industrial Commission shall comply with the procedures and requirements of Chapter 46b, Title 63, in any of its adjudicative proceedings conducted under the authority of this chapter.

History: C. 1953, 40-2-1.2, enacted by L. 1987, ch. 161, § 118.

Effective Dates. — Laws 1987, ch. 161, § 315 makes the act effective on January 1, 1988.

40-2-1.5. Industrial Commission to adopt federal safety and health standards for coal mining.

(1) The Industrial Commission may adopt rules that shall incorporate the federal safety and health standards relating to coal mining, including those promulgated under the Federal Mine Safety and Health Act of 1977 and its amendments.

(2) The Utah rules may not become subject to enforcement by the Industrial Commission until the Federal Mine Safety and Health Act and the rules and regulations promulgated with respect to that act are no longer in force.

History: C. 1953, 40-2-1.5, enacted by L. 1987, ch. 239, § 1; 1988, ch. 198, § 3.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, designated the previously undesignated language as Subsection (1), added Subsection (2), and substituted "may adopt rules that shall" for "shall adopt rules that substantially" in Subsection (1).

Federal Mine Safety and Health Act of 1977. — See 30 U.S.C. § 801 et seq.

Cross-References. — Eight-hour day, § 34-21-2.

Employment of children in mines, Utah Const., Art. XVI, Sec. 3; § 34-22-1.

Health of miners, Utah Const., Art. XVI, Sec. 6.

40-2-2. Right of examination and inspection.

Every owner, agent, manager or lessee of any coal or hydrocarbon mine, whenever it is in active operation, shall freely admit any representative of the Industrial Commission to such mine, on the exhibition of his certificate of appointment, for the purpose of making the examinations and inspections provided for in this chapter, and shall render any necessary assistance for such inspection; but such representative shall not unnecessarily obstruct the working of the mine. Every owner, agent, manager or lessee of such mine refusing to so admit such representative is guilty of a misdemeanor, and shall be punished by a fine of not less than $50 nor more than $500 for every such offense.

History: C.L. 1907, § 1511; C.L. 1917, § 3914; R.S. 1933 & C. 1943, 55-2-2.

40-2-3. Coal mine operators to submit reports and emergency preparedness plans.

(1) Coal mine operators shall forward to the Industrial Commission office by February 15 of each year:

(a) A detailed report on a form furnished by the Industrial Commission indicating:

(i) the character of the mine;

(ii) the tonnage of product during the preceding year which ended December 31;

(iii) the average number of persons employed, including lessees;

(iv) the number of days the mine was worked; and

(v) other information as required by the Industrial Commission. All such reports shall become part of the records of the Industrial Commission; and

(b) A written emergency preparedness plan which includes:

(i) provisions for test drills to validate the effectiveness of the plan; and

(ii) other information as required by the Industrial Commission.

(2) If a mine is operated by two or more operators in any year, each operator must furnish the succeeding operator a report of operations. This report must be included with that of the party operating the mine at the end of the year so that a complete record of the mine's operations may be submitted to the Industrial Commission.

History: C. 1953, 40-2-3, enacted by L. 1987, ch. 239, § 2.

Repeals and Reenactments. — Laws 1987, ch. 239, § 2 repeals former § 40-2-3, Utah Code Annotated 1953, relating to maps and reports, and enacts the present section.

40-2-4 to 40-2-13. Repealed.

Repeals. — Laws 1987, ch. 239, § 6 repeals §§ 40-2-4, 40-2-6, 40-2-7, 40-2-9, 40-2-10, and 40-2-12, Utah Code Annotated 1953, and §§ 40-2-5, 40-2-8, and 40-2-11, as amended by Laws 1949, ch. 64, § 1, requiring various safety measures, and § 40-2-13, Utah Code Annotated 1953, requiring investigations into explosions and accidents, effective April 27, 1987.

40-2-14. Examining board — Composition — Duties — Compensation — Commission to grant certificates.

(1) The Industrial Commission shall appoint an examining board of six members composed of:

(a) two members or employees of the commission;

(b) two coal mine operators' officials; and

(c) two coal miners.

(2) The board members shall:

(a) be citizens of the United States;

(b) have at least five years' experience in coal mining in this state;

(c) examine those applicants referred to in Section 40-2-15 as to their competency and qualifications;

(d) meet when directed by the commission;

(e) except for members of the commission or its employees, receive $50 per day spent:

(i) performing their duties; or

(ii) for actual and necessary travel expenses; and

(f) hold office at the pleasure of the commission.

(3) The commission shall grant certificates to those persons referred to in Section 40-2-15 who pass their examinations.

History: C. 1953, 40-2-14, enacted by L. 1987, ch. 239, § 3.

Repeals and Reenactments. — Laws 1987, ch. 239, § 3 repeals former § 40-2-14, as enacted by Laws 1983, ch. 182, § 1, relating to the examining board, and enacts the present section.

40-2-15. Certification requirements — Fees.

(1) The Industrial Commission shall collect a fee for the following:

(a) certification tests;

(b) sections of the examination that must be retaken; or

(c) recertification certificates.

(2) The Industrial Commission shall determine fees in this section under Subsection 63-38-3(2).

(3) Any section of the certification test may be retaken if not successfully completed.

(4) Experience and education required to obtain a certificate for the corresponding occupations are as follows:

(a) A mine foreman certificate requires at least four years varied underground coal mining experience, of which:

(i) two years' experience may be credited to a mining engineering graduate of an approved four-year college; or

(ii) one year's experience may be credited to a graduate of a two-year course in mining technology.

(b) A surface foreman certificate requires at least three years of varied surface experience.

(c) A fire boss certificate requires at least two years of underground coal mining experience, of which:

(i) one year's experience may be credited to a mining engineering graduate of an approved four-year college; or

(ii) six months' experience may be credited to a graduate of a two-year course in mining technology.

(d) A surface blasting certificate requires at least two years of blasting experience.

(e) An underground mine electrician certificate requires at least one year of varied electrical experience as specified in 30 C.F.R. Sec. 75.153.

(f) A surface mine electrician certificate requires at least one year of varied surface electrical experience as specified in 30 C.F.R. Sec. 77.103.

(5) United States citizenship is required for persons receiving certificates for occupations referred to in this section, unless he:

(a) presents satisfactory evidence of good moral character; and

(b) has declared his intention to become a United States citizen.

History: C. 1953, 40-2-15, enacted by L. 1987, ch. 239, § 4; 1988, ch. 211, § 1.

Repeals and Reenactments. — Laws 1987, ch. 239, § 4 repeals former § 40-2-15, as enacted by Laws 1984 (2nd S.S.), ch. 15, § 47, relating to fees and qualifications, and enacts the present section.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, deleted former Subsection (4)(b), listing the requirements for an assistant foreman certificate; redesignated former Subsections (4)(c) to (4)(g) as present Subsections (4)(b) to (4)(f); deleted "or shotfirer" following "fire boss" in Subsection (4)(c); substituted "as specified in 30 C.F.R. Sec. 75.153" for "in underground mines within the preceding five years" at the end of Subsection (4)(e); and substituted "as specified in 30 C.F.R. Sec. 77.103" for "within the preceding five years" at the end of Subsection (4)(f).

40-2-16. Necessity of certificate — Temporary mine foreman certificate — Surface foreman certificate — Fee — Employment of uncertified persons prohibited.

(1) A person may not work in any occupation referred to in Section 40-2-15 unless granted a certificate of competency by the Industrial Commission.

(2) (a) The Industrial Commission may issue, upon a showing of competency, one temporary mine foreman certificate to remain in effect until the earlier of the next scheduled certification examination or retest examination or until terminated by the Industrial Commission.

(b) The Industrial Commission may issue a surface foreman certificate to a current holder of an undergound mine foreman certificate, if the applicant has three years of varied surface mining experience. An applicant may receive credit for surface experience in any other industry that has substantially equivalent surface facilities, if he has performed or is presently performing the duties normally required of a surface foreman.

(3) The Industrial Commission shall collect a fee determined under Subsection 63-38-3(2) for each temporary certificate.

(4) An owner, operator, contractor, lessee, or agent may not employ a worker in any occupation referred to in Section 40-2-15 who is uncertified. The certificate shall be on file and available for inspection to interested persons in the office of the mine.

History: R.S. 1898, § 1526; C.L. 1907, § 1522; C.L. 1917, § 3925; L. 1923, ch. 10, § 1; R.S. 1933 & C. 1943, 55-2-16; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1; 1977, ch. 162, § 2; 1983, ch. 182, § 3; 1984 (2nd S.S.), ch. 15, § 48; 1987, ch. 239, § 5; 1988, ch. 211, § 2.

Amendment Notes. — The 1984 (2nd S.S.) amendment substituted "fee determined by it pursuant to Subsection 63-38-3(2)" in the third sentence for "fee of $20" and made minor changes in phraseology and style.

The 1987 amendment rewrote the section to the extent that a detailed analysis is impracticable.

The 1988 amendment, effective April 25, 1988, inserted the subsection designation (a) at the beginning of Subsection (2) and added Subsection (2)(b).

40-2-17. Violation of chapter — Penalty.

The neglect or refusal to perform the duties required to be performed by any section of this chapter, or the violation of any of the provisions hereof is a misdemeanor, and any person so neglecting or refusing to perform such duties or violating any such provisions, shall be punished by a fine of not less than $100 nor more than $500 for each such offense.

History: R.S. 1898, § 1516; C.L. 1907, § 1524; C.L. 1917, § 3926; R.S. 1933 & C. 1943, 55-2-17.

CHAPTER 3
WEIGHING COAL AT MINES

40-3-1. Operators to provide scales.

The owner, agent or operator of every coal mine at which the miners are paid by weight shall provide at such mine suitable and accurate scales of standard manufacture for the weighing of all coal which shall be hoisted or delivered from such mine. When coal is weighed in the miner's car such car shall be brought to a standstill on the scales before the weight is taken.

History: R.S. 1898 & C.L. 1907, § 1529; C.L. 1917, § 3930; R.S. 1933 & C. 1943, 55-3-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 183.

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

40-3-2. Weighmen — Oath — Record of coal mined by individual miners.

Such owner, agent or operator shall require the person authorized to weigh the coal to take and subscribe an oath to keep the scales correctly balanced, to accurately weigh and to correctly record the gross or screened weight, to the nearest ten pounds, of each miner's car of coal delivered, and such oath shall be kept conspicuously posted at the place of weighing. The record of the coal mined by each miner shall be kept separate, and shall be opened to his inspection at all reasonable hours, and also to the inspection of all other persons pecuniarily interested in the mine.

History: R.S. 1898 & C.L. 1907, § 1530; C.L. 1917, § 3931; R.S. 1933 & C. 1943, 55-3-2.

40-3-3. Check-weighmen — Duties and powers.

In all coal mines the miners employed and working therein may furnish a competent check-weighman at their own expense, who shall at all proper times have full right of access to and examination of such scales or machinery and right of inspection of measuring apparatus, and weights of coal mined and of accounts kept of the same; provided, that not more than one person on behalf of the miners collectively shall have such right of access, examination

and inspection of scales, measures and accounts at the same time, and that such person shall cause no unnecessary interference with the use of such scales, machinery or apparatus. Such agent of the miners shall before entering upon his duties take and subscribe an oath that he is duly qualified and will faithfully discharge the duties of check-weighman. Such oath shall be kept conspicuously posted at the place of weighing.

History: R.S. 1898 & C.L. 1907, § 1531; C.L. 1917, § 3932; R.S. 1933 & C. 1943, 55-3-3.

40-3-4. Fraudulent weighing — Penalty.

Any person having or using any scales, for the purpose of weighing the output of coal at mines, so arranged or constructed that fraudulent weighing may be done thereby, or who knowingly resorts to or employs any means whatsoever by reason of which such coal is not correctly weighed or reported in accordance with the provisions of this chapter; and any weighman or check-weighman who fraudulently weighs or records the weights of such coal, or connives at or consents to such fraudulent weighing, is guilty of a misdemeanor.

History: R.S. 1898 & C.L. 1907, § 1532; C.L. 1917, § 3933; R.S. 1933 & C. 1943, 55-3-4.

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

40-3-5. Industrial Commission to examine scales.

It shall be the duty of the Industrial Commission to examine all scales used at any coal mine for the purpose of weighing coal taken out of such mine, and on inspection, if found incorrect, it shall notify the owner or agent of such mine that they are incorrect. After such notice it shall be unlawful for any owner or agent to use or suffer the same to be used, until such scales are so adjusted that the same will give correct weight. Any person violating the provisions of this section is guilty of a misdemeanor.

History: R.S. 1898 & C.L. 1907, § 1534; C.L. 1917, § 3934; R.S. 1933 & C. 1943, 55-3-5.

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

40-3-6. Shipments — Bill of lading to show weight of car before and after loading.

It is hereby made the duty of all persons engaged in the mining or shipping of coal from any mine or point within this state to weigh each empty car before it is loaded and to note the weight thereof upon the bill of lading, and to weigh each car after the same is loaded and to note the weight thereof upon the bill of lading or waybill of the same. Any person violating the provisions of this section is guilty of a misdemeanor.

History: L. 1913, ch. 98, § 1; C.L. 1917, § 3935; R.S. 1933 & C. 1943, 55-3-6.

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

CHAPTER 4
NATURAL GAS

Section
40-4-1 to 40-4-7. Repealed.

40-4-1 to 40-4-7. Repealed.

Repeals. — Sections 40-4-1 to 40-4-7 (R.S. 1898 & C.L. 1907, §§ 1548 to 1551; L. 1909, ch. 115, §§ 1 to 3; C.L. 1917, §§ 4020 to 4023, 4025 to 4027; R.S. 1933 & C. 1943, 59-0-1 to 59-0-7), relating to natural gas, were repealed by Laws 1955, ch. 65, § 15.

CHAPTER 5
MISCELLANEOUS SAFETY PROVISIONS

Section
40-5-1. Surface hazards from mining — Slack coal afire — Liability.
40-5-2. Fire protection equipment.
40-5-3. Safety cages.
40-5-4. Storage of explosives — License.
40-5-5. Emergency supplies and medicine — First-aid materials.
40-5-6. Mine rescue team required — Immunity of rescue participants.

40-5-1. Surface hazards from mining — Slack coal afire — Liability.

The owner, lessee or agent of any mine who by working such mine has caused, or may hereafter cause, the surface of the public domain, or of any highway, or other lands, to cave in and form a pit or sink into which persons or animals are likely to fall shall cause such pit or sink to be filled up, or to be securely inclosed with a substantial fence at least four and one-half feet high; and if he has heaped or piled, or shall hereafter heap or pile, slack coal on the surface, and such slack coal shall take fire and endanger the life or safety of any person or animal, he shall cause the fire to be extinguished or the burning coal to be inclosed with a sufficient fence. Any person violating any of the provisions of this section is guilty of a misdemeanor, and shall be liable for all damages resulting.

History: R.S. 1898 & C.L. 1907, §§ 1539, 1540; C.L. 1917, §§ 3940, 3941; R.S. 1933 & C. 1943, 55-4-1.

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

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 167 et seq.

C.J.S. — 58 C.J.S. Mines and Minerals § 240.

A.L.R. — Duty and liability as to plugging oil or gas well abandoned or taken out of production, 50 A.L.R.3d 240.

Key Numbers. — Mines and Minerals ⇐ 92.9.

40-5-2. Fire protection equipment.

All mines having but one exit, when the same is covered with a building containing the mechanical plant, furnace room or blacksmith shop, shall have fire protection. Where steam is used, hose of sufficient length to reach the farthest point of the plant shall be attached to a feed pump or injector, and the same kept ready for immediate use. In mines where water is not available, chemical fire extinguishers or hand grenades shall be kept in convenient places for immediate use. Any person who refuses or neglects to comply with the provisions of this section is guilty of a misdemeanor.

History: L. 1901, ch. 128, § 1; C.L. 1907, § 1540x; C.L. 1917, § 3942; R.S. 1933 & C. 1943, 55-4-2.

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

40-5-3. Safety cages.

It is unlawful for any person to sink any vertical shaft, where mining cages are used, to a greater depth than 200 feet, unless the shaft is provided with an iron-bonneted safety cage to be used in lowering and hoisting employees or other persons. The safety apparatus, whether consisting of eccentrics, springs or other device, must be securely fastened to the cage, and of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet must be made of boiler sheet iron of good quality, at least three-sixteenths of an inch in thickness, and must cover the top of the cage in such manner as to afford the greatest protection to life and limb from any debris or anything falling down the shaft. Any violation of this section is punishable by a fine of not less than $200 nor more than $500, the same to be paid into the county treasury of the county in which the cause is heard.

History: L. 1901, ch. 129, § 1; C.L. 1907, § 1540x1; C.L. 1917, § 3943; R.S. 1933 & C. 1943, 55-4-3.

40-5-4. Storage of explosives — License.

It is unlawful for any person employing more than four men at any one time to have stored at any shaft house, or covering over any adit, incline or tunnel connected with a metalliferous mine, any powder or other high explosive whatever; or to have stored within the underground workings, stope or drifts of any such mine at any one time more than enough powder or other high explosive to do the work for each twenty-four hours, without first having obtained written permission from the Industrial Commission. Any violation of this section shall be punished by a fine of not less than $100 nor more than $1,000.

History: L. 1903, ch. 12, §§ 1, 2; C.L. 1907, § 1540x2; C.L. 1917, § 3944; L. 1921, ch. 80, § 1; R.S. 1933 & C. 1943, 55-4-4.

NOTES TO DECISIONS

Tort liability.

Violation of provisions relating to storage of explosives in mine renders mine owner-operator liable for injuries proximately caused to an invitee by such violation. Skerl v. Willow Creek Coal Co., 92 Utah 474, 69 P.2d 502 (1937).

40-5-5. Emergency supplies and medicine — First-aid materials.

At each mine in this state where five or more men are employed it shall be the duty of the operator or owner thereof to keep readily accessible a properly constructed stretcher, a woolen blanket, a waterproof blanket and standard (United States Bureau of Mines) first-aid materials for the comfort and treatment of anyone injured in such mine. Any willful neglect, refusal or failure to do the things required to be done by this section, or any attempt to obstruct or interfere with the compliance of its provisions, is a misdemeanor.

History: L. 1907, ch. 33, §§ 1, 2; C.L. 1907, §§ 1540x3, 1540x4; C.L. 1917, §§ 3945, 3946; R.S. 1933 & C. 1943, 55-4-5; L. 1945, ch. 83, § 1.

Cross-References. — Hospital and medical services for disabled miners, §§ 35-6-1, 35-6-2.

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

40-5-6. Mine rescue team required — Immunity of rescue participants.

(1) Each mine owner shall maintain and support a mine rescue team at such owner's mine or otherwise ensure the availability of a mine rescue team in the event of an emergency, in accordance with the requirements of the Federal Mine Safety and Health Act of 1977, and the regulations promulgated under it.

(2) An individual, mine owner, or sponsoring owner who participates in a mine rescue operation during an emergency at the owner or sponsor's mine and who in good faith provides emergency care or assistance to an injured person during the emergency, is not liable in damages to such injured person on account of rendering emergency care or assistance.

History: C. 1953, 40-5-6, enacted by L. 1983, ch. 181, § 1.

Federal Mine Safety and Health Act of 1977. — See 30 U.S.C. § 801 et seq.

CHAPTER 6
BOARD AND DIVISION OF OIL, GAS AND MINING

Sunset Act. — Section 63-55-7 provides that the Division of Oil, Gas and Mining terminates on July 1, 1993.

40-6-1. Declaration of public interest.

It is declared to be in the public interest to foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas in the state of Utah in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners may be fully protected; to provide exclusive state authority over oil and gas exploration and development as regulated under the provisions of this chapter; to encourage, authorize, and provide for voluntary agreements for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers, and the general public may realize and enjoy the greatest possible good from these vital natural resources.

History: C. 1953, 40-6-1, enacted by L. 1983, ch. 205, § 1.

Repeals and Reenactments. — Laws 1983, ch. 205, § 1 repealed former §§ 40-6-1 to 40-6-3, 40-6-3.2, 40-6-3.3, 40-6-4 to 40-6-19 (L. 1955, ch. 65, §§ 1, 2, 4 to 12, 14, 16; 1961, ch. 78, § 1; 1963, ch. 64, § 1; 1963, ch. 65, § 1; 1966 (2nd S.S.), ch. 8, § 1; 1967, ch. 176, §§ 35, 37 to 39; 1969, ch. 92, § 1; 1969, ch. 93, § 1; 1969, ch. 94, § 1; 1969, ch. 95, § 1; 1969, ch. 198, §§ 27, 28; 1975, ch. 129, §§ 1, 2; 1975, ch. 130, §§ 5, 12, 13; 1977, ch. 161, § 1; 1978 (2nd S.S.), ch. 5, § 1; 1979, ch. 146, § 1; 1982, ch. 47, §§ 2 to 4; 1983, ch. 318, §§ 4, 5), relating to the board and division of oil, gas and mining, and enacted present §§ 40-6-1 to 40-6-18.

Cross-References. — Natural Resources Act, § 63-34-1 et seq.

NOTES TO DECISIONS

Cited in Bennion v. Gulf Oil Corp., 716 P.2d 267 (Utah 1985).

COLLATERAL REFERENCES

Utah Law Review. — Aneth Spacing Order: A Case Study of Administrative Regulations, 7 Utah L. Rev. 16.

An Argument for Enforced Unit Development of Oil and Gas Reservoirs in Utah, 7 Utah L. Rev. 197.

Journal of Energy Law and Policy. — Utah's Oil & Gas Conservation Act of 1983, 5 J. Energy L. & Pol'y 49 (1984).

Bennion v. Utah State Board of Oil, Gas & Mining: Interpreting the Pooling Provisions of Utah's Oil and Gas Conservation Act, 6 J. Energy L. & Pol'y 219 (1985).

The Utah Law of Oil and Gas, 7 J. Energy L. & Pol'y 191 (1986).

Am. Jur. 2d. — 16 Am. Jur. 2d Constitutional Law §§ 335, 345; 16A Am. Jur. 2d Constitutional Law §§ 382 to 385; 38 Am. Jur. 2d Gas and Oil § 145 et seq.

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

A.L.R. — Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits, 10 A.L.R.3d 1226.

Key Numbers. — Mines and Minerals ⇐ 92.8.

40-6-2. Definitions.

For the purpose of this chapter:

(1) "Board" means the Board of Oil, Gas and Mining.

(2) "Correlative rights" means the opportunity of each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste.

(3) "Gas" means natural gas or natural gas liquids or other gas or any mixture thereof, defined as follows:

(a) "Natural gas" means those hydrocarbons, other than oil and other than natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form.

(b) "Other gas" means hydrogen sulfide, carbon dioxide, helium, nitrogen, and other non-hydrocarbon gases that occur naturally in the gaseous phase in the reservoir or are injected into the reservoir in connection with pressure maintenance, gas cycling, or other secondary or enhanced recovery projects.

(c) "Natural gas liquids" means those hydrocarbons initially in reservoir natural gas, regardless of gravity, that are separated in gas processing plants from the natural gas as liquids at the surface through the process of condensation, absorption, adsorption, or other methods.

(4) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well within the state of Utah in violation of this chapter or any rule or order of the board.

(5) "Illegal product" means any product derived in whole or in part from illegal oil or illegal gas.

(6) "Oil" means crude oil or condensate or any mixture thereof, defined as follows:

(a) "Crude oil" means those hydrocarbons, regardless of gravity, that occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

(b) "Condensate" means those hydrocarbons, regardless of gravity, that occur naturally in the gaseous phase in the reservoir that are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the wellbore, or at the surface in field separators.

(7) "Owner" means the person who has the rights to drill into and produce from a reservoir and to appropriate the oil and gas that he produces, either for himself or for himself and others.

(8) "Operator" means the person who has been designated by the owners or the board to operate a well or unit.

(9) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure that is completely separated from any other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are synonymous with "pool".

(10) "Producer" means the owner or operator of a well capable of producing oil and gas.

(11) "Product" means any commodity made from oil and gas.

(12) "Waste" means:

(a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or gas or reservoir energy;

(b) the inefficient storing of oil or gas;

(c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations, or that causes unnecessary wells to be drilled, or that causes the loss or destruction of oil or gas either at the surface or subsurface;

(d) the production of oil or gas in excess of:

(i) transportation or storage facilities;

(ii) the amount reasonably required to be produced in the proper drilling, completing, testing, or operating of a well or otherwise utilized on the lease from which it is produced; and

(e) underground or above ground waste in the production or storage of oil or gas.

(13) Oil and gas as defined in this chapter shall not include gaseous or liquid substances derived from coal, oil shale, tar sands, or other hydrocarbons classified as synthetic fuels.

History: C. 1953, 40-6-2, enacted by L. 1983, ch. 205, § 1; 1985, ch. 94, § 1.

Amendment Notes. — The 1985 amendment substituted "from natural gas" for "from oil" in Subsection (3)(a) and designated the last paragraph as Subsection (13).

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

40-6-3. Waste prohibited.

The waste of oil or gas is prohibited.

History: C. 1953, 40-6-2, enacted by L. 1983, ch. 205, § 1.

40-6-4. Board of Oil, Gas and Mining created — Functions — Appointment of members — Terms — Chairman — Quorum.

(1) There is created within the Department of Natural Resources the Board of Oil, Gas and Mining. The board shall be the policymaking body for the Division of Oil, Gas and Mining. Upon the effective date of this act the terms of the present members of the board shall expire.

(2) The board shall then consist of seven members appointed by the governor, with the advice and consent of the Senate. No more than four members shall be from the same political party. The members shall have the following qualifications:

(a) two members knowledgeable in mining matters;

(b) two members knowledgeable in oil and gas matters;

(c) one member knowledgeable in ecological and environmental matters;

(d) one member who is a private land owner, owns a mineral or royalty interest and is knowledgeable in those interests; and

(e) one member who is knowledgeable in geological matters.

(3) The terms of office of four of the members first appointed shall expire March 1, 1985, and the terms of the remaining three members shall expire on March 1, 1987. Their successors shall be appointed for terms of four years. Vacancies occurring by reason of death, resignation, or other cause shall be filled by the appointment of another person by the governor, with the advice and consent of the Senate, for the unexpired term of the person whose office was vacated and shall have the same qualifications as his predecessor.

(4) The board shall appoint its chairman from the membership. Four members of the board shall constitute a quorum for the transaction of business and the holding of hearings.

History: C. 1953, 40-6-4, enacted by L. 1983, ch. 205, § 1.

"Effective date of this act." — The phrase "the effective date of this act," appearing in Subsection (1), means May 10, 1983, the effective date of Laws 1983, Chapter 205, which enacted this chapter.

Cross-References. — Board and division subject to Chapter 46b, Title 63 in adjudicative proceedings, §§ 40-6-10(1)(a), 63-34-3.1.

Creation of Department of Natural Resources and boards and divisions within department, § 63-34-3.

40-6-5. Jurisdiction of board — Rules.

(1) The board has jurisdiction over all persons and property necessary to enforce this chapter. The board shall enact rules in accordance with the Utah Administrative Rulemaking Act.

(2) The board shall adopt rules and make orders as necessary to administer the following provisions:

(a) Ownership of all facilities for the production, storage, treatment, transportation, refining, or processing of oil and gas shall be identified.

(b) Well logs, directional surveys, and reports on well location, drilling, and production shall be made and filed with the division. Logs of wells marked "confidential" shall be kept confidential for one year after the date on which the log is required to be filed, unless the operator gives written permission to release the log at an earlier date. Production reports shall be:

(i) filed monthly;

(ii) accurate; and

(iii) in a form that reasonably serves the needs of state agencies and private fee owners.

(c) Monthly reports from gas processing plants shall be filed with the division.

(d) Wells shall be drilled, cased, operated, and plugged in such manner as to prevent:

(i) the escape of oil, gas, or water out of the reservoir in which they are found into another formation;

(ii) the detrimental intrusion of water into an oil or gas reservoir;

(iii) the pollution of fresh water supplies by oil, gas, or salt water;

(iv) blowouts;

(v) cavings;

(vi) seepages; and

(vii) fires.

(e) The drilling of wells shall not commence without an adequate and approved supply of water as required by Chapter 3, Title 73. This provision is not intended to impose any additional legal requirements, but to assure that existing legal requirements concerning the use of water have been met prior to the commencement of drilling.

(f) The operator shall furnish a reasonable performance bond or other good and sufficient surety, conditioned for the performance of the duty to:

(i) plug each dry or abandoned well;

(ii) repair each well causing waste or pollution; and

(iii) maintain and restore the well site.

(g) Production from wells shall be separated into oil and gas and measured by means and upon standards that will be prescribed by the board and will reflect current industry standards.

(h) Crude oil obtained from any reserve pit, disposal pond or pit, or similar facility, and any accumulation of nonmerchantable waste crude oil shall be treated and processed, as prescribed by the board.

(i) Any person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas or injects fluids for cycling, pressure maintenance, secondary or enhanced recovery, or salt water disposal in this state shall maintain complete and accurate records of the quantities

produced, sold, purchased, acquired, stored, transported, refined, processed, or injected for a period of at least six years. The records shall be available for examination by the board or its agents at any reasonable time. Rules enacted to administer this subsection shall be consistent with applicable federal requirements.

(j) Any person with an interest in a lease shall be notified when all or part of that interest in the lease is sold or transferred.

(3) The board has the authority to regulate:

(a) all operations for and related to the production of oil or gas including:

(i) drilling, testing, equipping, completing, operating, producing, and plugging of wells; and

(ii) reclamation of sites;

(b) the spacing and location of wells;

(c) operations to increase ultimate recovery, such as:

(i) cycling of gas;

(ii) the maintenance of pressure; and

(iii) the introduction of gas, water, or other substances into a reservoir;

(d) the disposal of salt water and oil-field wastes;

(e) the underground and surface storage of oil, gas, or products; and

(f) the flaring of gas from an oil well.

(4) For the purposes of administering this chapter, the board may designate:

(a) wells as:

(i) oil wells; or

(ii) gas wells; and

(b) pools as:

(i) oil pools; or

(ii) gas pools.

(5) The board has exclusive jurisdiction over:

(a) class II injection wells, as defined by the federal Environmental Protection Agency or any successor agency; and

(b) pits and ponds in relation to these injection wells.

(6) The board has jurisdiction:

(a) to hear any questions regarding multiple mineral development conflicts with oil and gas operations if there:

(i) is potential injury to other mineral deposits on the same lands; or

(ii) are simultaneous or concurrent operations conducted by other mineral owners or lessees affecting the same lands; and

(b) to enter its order or rule with respect to those questions.

(7) The board has enforcement powers with respect to operators of minerals other than oil and gas as are set forth in Section 40-6-11, for the sole purpose of enforcing multiple mineral development issues.

History: C. 1953, 40-6-5, enacted by L. 1983, ch. 205, § 1; 1985, ch. 207, § 1; 1988, ch. 62, § 1.

Amendment Notes. — The 1985 amendment deleted "the provisions of" after "enforce" in the introductory paragraph; substituted "except" for "provided" in Subsection (1)(b); combined the former first and second sentences of Subsection (1)(b) to form a single sentence; added Subsection (1)(g); redesignated Subsections (1)(g) and (1)(h) as Subsections (1)(h) and (1)(i); combined the former first and second

sentences of Subsection (1)(h) to form a single sentence; substituted "may" for "shall have the authority to" in Subsection (3); divided former Subsection (5) into Subsections (5) and (6); added the internal designations (a) and (b) in Subsection (5); substituted "powers" for "power" in Subsection (6); and made minor changes in phraseology and punctuation.

The 1988 amendment, effective April 25, 1988, designated the former introductory paragraph as present Subsection (1) and redesignated the following subsections accordingly; substituted "confidential for one year" for "confidential for six months" in the second sentence of present Subsection (2)(b); substituted "gas processing plants" for "refineries, oil and gas pipelines, and crude oil and gas trucking companies" in present Subsection (2)(c); and made technical changes throughout the section to the extent that a detailed comparison is impracticable.

Cross-References. — Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

40-6-6. Drilling units — Establishment — Pooling of interests — Order — Operation.

(1) The Board of Oil, Gas and Mining, may order the establishment of drilling units covering any pool. All such orders shall be made upon terms and conditions that are just and reasonable. Drilling units shall be of uniform size and shape for the entire pool unless the board finds that it must make an exception due to geologic or geographic or other factors. When necessary the board may divide any pool into zones and establish drilling units for each zone, which units may differ in size and shape from those established in any other zone. The order shall include:

(a) the acreage to be embraced within each drilling unit and the shape of each drilling unit as determined by the board but the unit shall not be smaller than the maximum area that can be efficiently and economically drained by one well; and

(b) the direction that no more than one well shall be drilled for production from the common source of supply on any drilling unit, and the authorized location of the well.

(2) The board may modify the order to provide an exception to the authorized location of the well when the board finds such a modification to be reasonably necessary.

(3) An order establishing drilling units for a pool shall cover all lands determined by the board to be underlaid by the pool, and the order may be modified by the board to include additional areas determined to be underlaid by the pool.

(4) After an order fixing drilling units has been entered by the board, the drilling of any well into the pool at a location other than authorized by the order, is prohibited. The operation of any well drilled in violation of an order fixing drilling units is prohibited. The board may modify the order to decrease or increase the size of the drilling units or permit additional wells to be drilled within the established units.

(5) Two or more owners within a drilling unit may pool their interests for the development and operation of the unit. In the absence of voluntary pooling, the board may enter an order pooling all interests in the drilling unit for the development and operation. The order shall be made upon terms and conditions that are just and reasonable. Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of the operations upon each separately owned tract in the unit by the several owners. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling

order shall, when produced, be deemed for all purposes to have been produced from each tract by a well drilled thereon.

(6) Each pooling order shall permit the drilling and operation of a well on the drilling unit by any owner within the drilling unit, and shall provide for the payment of the costs, including a reasonable charge for supervision and storage facilities, as provided in this subsection.

In relation to each owner who refuses to agree to bear his proportionate share of the costs of the drilling and operation of the well (the nonconsenting owner), the order shall provide for reimbursement to the owner paying for the drilling and operation of the well (consenting owners) for the nonconsenting owner's share of the costs out of, and only out of, production from the unit attributable to his tract. The board is authorized to provide that the consenting owners shall own and be entitled to receive all production from the well, applicable to each tract or interest, and obligations payable out of production, until the consenting owners have been paid the amount due under the terms of the pooling order or order relating to the drilling unit. In the event of any dispute as to such costs, the board shall determine the proper costs. The order shall provide that each consenting owner shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to his interest in the unit, and, unless he has agreed otherwise, his proportionate part of the nonconsenting owner's share of such production until costs are recovered as provided in this subsection; and that each nonconsenting owner shall be entitled to receive, subject to royalty or similar obligations, the share of production from the well applicable to his interest in the unit after the consenting owners have recovered from the nonconsenting owner's share of production the following:

(a) In respect to every such well 100% of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment, and piping), plus 100% of the nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until the consenting owners have recovered these costs, it being intended that the nonconsenting owner's share of these costs and equipment will be that interest which would have been chargeable to the nonconsenting owner had he initially agreed to pay his share of the costs of the well from the beginning of the operation; and

(b) An amount to be determined by the board but not less than 150% nor to exceed 200% of that portion of the costs and expenses of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing, and the cost of equipment in the well (to and including the wellhead connections), after deducting any cash contributions received by the consenting owners. A reasonable interest charge may be included if the board finds it appropriate.

(7) The order shall provide that:

(a) A nonconsenting owner of a tract in a drilling unit, which tract is subject to a lease or other contract for the development of oil and gas, shall have the costs provided in Subsection (6) paid from the production attributable to that tract. Any royalty interest or other interest not liable for the costs of production shall be paid by the nonconsenting owner and

not from the production attributable to the tract until the consenting owners have recovered the costs as provided in Subsection (6).

(b) A nonconsenting owner of a tract in a drilling unit, which is not subject to a lease or other contract for the development of oil and gas, shall receive as a royalty the average landowners royalty attributable to each tract within the drilling unit, determined prior to the commencement of drilling and payable from the production allocated to each tract until the consenting owners have recovered the costs as provided in Subsection (6).

(8) The operator of a well under a pooling order in which there are nonconsenting owners shall furnish the nonconsenting owners with monthly statements of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of this production during the preceding month. If and when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in Subsection (6) of this section, the relinquished interest of the nonconsenting owner shall automatically revert to him; and the nonconsenting owner shall from that time own the same interest in the well and the production from it, and be liable for the further costs of the operation as if he had participated in the initial drilling and operation. These costs are payable out of production unless otherwise agreed between the nonconsenting owner and the operator.

History: C. 1953, 40-6-6, enacted by L. 1983, ch. 205, § 1.

NOTES TO DECISIONS

ANALYSIS

Rights of nonconsenting mineral owners.
Test well.

Rights of nonconsenting mineral owners.

A nonconsenting mineral owner had a vested right to a royalty prior to payout, and also a vested right, subject to payment of expenses, to his share of the income derived from a well in his drilling unit. S.H. Bennion v. Utah State Bd. of Oil, Gas & Mining, 675 P.2d 1135 (Utah 1983).

Test well.

The Board of Oil, Gas and Mining had no authority to allow a test well to displace a production well from a common source of supply on a drilling unit and to hold a nonconsenting mineral interest owner responsible for a proportionate share of the cost of drilling the second well. Bennion v. Gulf Oil Corp., 716 P.2d 267 (Utah 1985).

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — Compulsory Pooling and Unitization: State Options in Dealing with Uncooperative Owners, 7 J. Energy L. & Pol'y 255 (1986).

40-6-7. Agreements for repressuring or pressure maintenance or cycling or recycling operations — Plan for development and operation of pool or field.

(1) An agreement for repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid

hydrocarbons from natural gas, or for carrying on any other methods of unit or cooperative development or operation of a field or pool or a part of either, is authorized and may be performed, and shall not be held or construed to violate any statutes relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the board as being in the public interest and promotes conservation, increases ultimate recovery and prevents waste of oil or gas provided the agreement protects the correlative rights of each owner or producer.

(2) A plan for the development and operation of a pool or field shall be presented to the board and may be approved after notice and hearing.

History: C. 1953, 40-6-7, enacted by L. 1983, ch. 205, § 1.

40-6-8. Field or pool units — Procedure for establishment — Operation.

(1) The board may hold a hearing to consider the need for the operation as a unit of one or more pools or parts of them in a field.

(2) The board shall make an order providing for the unit operation of a pool or part of it, if the board finds that:

(a) Such operation is reasonably necessary for the purposes of this chapter; and

(b) The value of the estimated additional recovery of oil or gas substantially exceeds the estimated additional cost incident to conducting such operations.

(3) The order shall prescribe a plan for unit operations that shall include:

(a) a description of the lands and of the pool or pools or parts of them to be so operated, termed the unit area;

(b) a statement of the nature of the operations contemplated;

(c) an allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the board shall determine the relative value, from evidence introduced at the hearing of the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area;

(d) a provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such item shall be determined by the owners of the unit area (not including royalty owners); but if the owners of the unit area are unable to agree upon the amount or correctness, the board shall determine them. The net amount charged against the owner of an interest in a separately owned tract shall be considered expense of unit operation chargeable against his interest in the tract. The adjustments pro-

vided for may be treated separately and handled by agreements separate from the unitization agreement;

(e) a provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how these costs shall be paid, including a provision providing a procedure for the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interest of such owner, to be sold and the proceeds applied to the payment of such costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of the cost of developing and operating the unit area. This lien may be established and enforced in the same manner as provided by Sections 38-1-8 to 38-1-26 inclusive. For such purposes any nonconsenting owner shall be deemed to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion of it, however accomplished, after the effective date of the order creating the unit, shall not relieve the transferred interest of the operator's lien on said interest for the cost and expense of unit operations;

(f) a provision, if necessary, for carrying or otherwise financing any owner who elects to be carried or otherwise financed, allowing a reasonable interest charge for such service payable out of such owner's share of the production;

(g) a provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a percentage vote corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner;

(h) the time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate;

(i) such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of correlative rights; and

(j) the designation of a unit operator.

(4) No order of the board providing for unit operations of a pool or pools shall become effective unless and until the plan for unit operations prescribed by the division has been approved in writing by those owners who, under the board's order, will be required to pay 70% of the costs of the unit operation, and also by the owners of 70% of the production or proceeds that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the persons owning required percentage of interest in that unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, the order shall be ineffective and shall be revoked by the board unless for good cause shown the board extends this time.

(5) An order providing for unit operations may be amended by an order made by the board in the same manner and subject to the same conditions as an original order providing for unit operations, provided:

(a) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payments and other such interests which are free of costs shall not be required.

(b) No such order of amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, or change the percentage for allocation of cost as established for any separately owned tract by the original order.

(6) The board, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit area established by a previous order of the division. The order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production allocated shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportions of [as] those specified in the previous order.

(7) An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct will have no adverse effect upon other portions of the pool.

(8) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners. The portions of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled. Operations conducted pursuant to an order of the board providing for unit operations shall constitute a fulfillment of all the express or implied obligations for each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the board.

(9) The portion of the unit production allocated to any tract, and the proceeds from the sale, shall be the property and income of the several owners, subject to the rights of royalty owners, to whom, or to whose credit, they are allocated or payable under the order providing for unit operations.

(10) No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

(11) Except to the extent that the parties affected agree and as provided in (e) of Subsection (3) of this section, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area and shall be the property of the owners in the proportion that the expenses of unit operations are charged, unless otherwise provided in the plan of unit operation.

(12) This section shall apply only to field or pool units and shall not apply to the unitization of interests within a drilling unit as may be authorized and governed under the provisions of Section 40-6-6.

History: C. 1953, 40-6-8, enacted by L. 1983, ch. 205, § 1.

40-6-9. Proceeds from sale of production — Proceeding on petition to determine cause of nonpayment — Remedies.

(1) The owner of a royalty, overriding royalty, production payment, unleased working interest, or any other interest entitled to share in the proceeds from the sale of production from a well who has not received these proceeds on a regular basis may file a petition with the Board of Oil, Gas and Mining to conduct a hearing to determine why these proceeds have not been paid.

(2) Upon receipt of the petition the board shall set the matter for investigation and negotiation by the division within 60 days.

(3) If the matter cannot be resolved by negotiation as of that date, the board may set a hearing within 30 days. If the board does not set a hearing, all information gathered during the investigation and negotiation shall be given to the petitioner who may then seek a remedy in the court system.

(4) If, after a hearing, the board finds the payment of proceeds delay is without reasonable justification, it may order a complete accounting and require the proceeds and interest to be paid into an interest bearing escrow account and set a date not later than 90 days for final distribution. The board may also assess a penalty of up to 25% of the proceeds and interest at the rate of 1½% per month from the date of delinquency until paid upon finding that the delay of payment of proceeds was known and intentional.

History: C. 1953, 40-6-9, enacted by L. 1983, ch. 205, § 1.

40-6-9.5. Permits for crude oil production — Application — Bond requirement — Closure of facilities — Availability of records.

(1) The division may issue permits authorizing construction, operation, maintenance, and cessation of treating facilities and operations covered by Subsection 40-6-5(1)(g) [Subsection 40-6-5(2)(h)] and to approve, as part of that permit, post-cessation reclamation of the site.

(2) Each owner and operator of any facility described in Subsection 40-6-5(1)(g) [Subsection 40-6-5(2)(h)] or planning to construct, operate, or maintain a facility described in Subsection 40-6-5(1)(g) [Subsection 40-6-5(2)(h)] shall submit to the division an application stating in detail the location, type, and capacity of the facility contemplated; the extent and location of area disturbed or to be disturbed including but not limited to any pits, ponds, or lands, associated with the facility; a plan for reclamation of the site; and other materials required by the division. All existing facilities described in Subsection 40-6-5(1)(g) [Subsection 40-6-5(2)(h)] shall submit plans by July 28, 1985. Application for all planned facilities must be approved and a permit issued before any ground clearing or construction may occur.

(3) As a condition for approval of any permit, the owner and operator shall post a bond in an amount determined by the division to cover reclamation

costs for the site. Approval of any permit is also conditioned upon compliance with all laws, rules, and orders of the board. Failure to post the bond is considered sufficient grounds to deny a permit.

(4) The board may order the closure of any facility described in Subsection 40-6-5(1)(g) [Subsection 40-6-5(2)(h)] if an application is not forthcoming in the time allowed in Subsection (2), a bond is not posted, a violation of the rules and regulations of other state or federal agencies exists, or for other material and substantial cause.

(5) The owner and operator are subject to all applicable state, federal, and local rules and regulations.

(6) The records required to be kept by Subsection 40-6-5(1)(h) [Subsection 40-6-5(2)(i)] shall be available for inspection and audit by the board or its agents during reasonable working hours.

History: C. 1953, 40-6-9.5, enacted by L. 1983, ch. 207, § 2.

Compiler's Notes. — The provisions of former Subsection 40-6-5(1)(g), cited in Subsections (1), (2), and (4), now appear in Subsection 40-6-5(2)(h); the provisions of former Subsection 40-6-5(1)(h), cited in Subsection (6), now appear in Subsection 40-6-5(2)(i).

40-6-10. Procedures — Adjudicative proceedings — Emergency orders — Hearing examiners.

(1) (a) The Board of Oil, Gas, and Mining and the Division of Oil, Gas, and Mining shall comply with the procedures and requirements of Chapter 46b, Title 63, in their adjudicative proceedings.

(b) The board shall enact rules governing its practice and procedure that are not inconsistent with Chapter 46b, Title 63.

(2) When an emergency requiring immediate action is found by the division director or any board member to exist, he may issue an emergency order according to the requirements and procedures of Chapter 46b, Title 63.

(3) Any notice required by this chapter, except as otherwise provided, shall be given at the election of the board either by personal service or by one publication in a daily newspaper of general circulation in the city of Salt Lake and county of Salt Lake, Utah, and in all newspapers of general circulation published in the county where the land is affected, or some part of the land is situated.

(4) (a) Any order made by the board is effective on issuance.

(b) All rules and orders issued by the board shall be:

(i) in writing;

(ii) entered in full in books to be kept by the board for that purpose;

(iii) indexed; and

(iv) public records open for inspection at all times during reasonable office hours.

(c) A copy of any rule, finding of fact, or order, certified by the board or by the division director, shall be received in evidence in all courts of this state with the same effect as the original.

(5) The board may act upon its own motion or upon the petition of any interested person.

(6) (a) The board may appoint a hearing examiner to take evidence and to recommend findings of fact and conclusions of law to the board.

(b) Any member of the board, division staff, or any other person designated by the board may serve as a hearing examiner.

(c) The board may enter an order based on the recommendations of the examiner.

History: C. 1953, 40-6-10, enacted by L. 1983, ch. 205, § 1; 1985, ch. 94, § 2; 1987, ch. 161, § 119.

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

Cross-References. — Personal service, Rules of Civil Procedure, Rule 4.

40-6-11. Power to summon witnesses, administer oaths and require production of records — Enforcement — Penalties for violation of chapter or rules — Illegal oil or gas — Civil liability.

(1) The board may summon witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

(2) (a) If any person fails or refuses to comply with a subpoena issued by the board, or fails or refuses to testify about any matter, the board may apply to any district court in the state for an order compelling that person to comply with the subpoena, and to attend before the board and produce the subpoenaed records, books, and documents for examination, and to give his testimony.

(b) The court may punish the person for contempt as if he disobeyed a subpoena issued by the court, or if he refused to testify in a court.

(3) (a) Whenever it appears that any person is violating any provision of this chapter or any rule or order made under the authority of this chapter, the board may issue an order requiring compliance within a period not to exceed 30 days.

(b) The board may bring suit in the name of the state against any person violating this chapter, or rules or orders made under the authority of this chapter if:

(i) the violation continues after expiration of the time period granted in Subsection (3)(a);

(ii) the violation presents an immediate threat to public health, safety, or welfare; or

(iii) the violation would cause waste.

(4) (a) If the board determines, after an adjudicative proceeding, that any person has violated any provision of this chapter, or any permit, rule, or order made under the provisions of this chapter, that person is subject, in a civil proceeding, to a penalty not exceeding $5,000 per day for each day of violation.

(b) If the board determines that the violation is willful, that person may be fined not more than $10,000 for each day of violation.

(5) If ordered to do so by the board, the director of the division may order the immediate closure or shutdown of any well that is operating in violation of the provisions of this chapter, if the closure or shutdown will not cause waste or is necessary because of an immediate threat to public health, safety, or welfare.

(6) (a) No person may sell, purchase, acquire, transport, refine, process, or handle illegal oil, gas, or product, if the person knows or has reason to know that the oil, gas, or product is illegal.

(b) The court in the district where the illegal oil, gas, or product is found, shall, after notice and hearing in an action brought by the board, order the product to be seized and sold, and the proceeds returned or held for the legal owner.

(7) (a) Nothing in this chapter, and no suit by or against the board, and no violation charged or asserted against any person under any provisions of this chapter, or any rule or order issued under the authority of this chapter, shall impair, abridge, or delay any cause of action for damages that any person may have or assert against any person violating any provision of this chapter, or any rule or order issued under the authority of this chapter.

(b) Any person damaged by any violation may sue for and recover whatever damages that he otherwise may be entitled to receive.

History: C. 1953, 40-6-11, enacted by L. 1983, ch. 205, § 1; 1987, ch. 161, § 120.

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

40-6-12. Evasion of chapter or rules — Penalties — Limitation of actions.

(1) (a) A person is guilty of a class B misdemeanor if, for the purpose of evading this chapter or any rule or order of the board, he is convicted of any of the following:

(i) making or causing to be made any false entry in any report, record, account, or memorandum required by this chapter or by any rule or order;

(ii) omitting or causing to be omitted from any report, record, account, or memorandum, full, true, and correct entries as required by this chapter or by any rule or order; or

(iii) removing from this state or destroying, mutilating, altering, or falsifying any record, account, or memorandum.

(b) Upon conviction, that person is subject to a fine of not more than $5,000 or imprisonment for a term not exceeding six months, or to both fine and imprisonment.

(2) No suit, action, or other proceeding based upon a violation of this chapter or any rule or order of the board may be commenced or maintained unless it is commenced within one year from the date of the alleged violation.

History: C. 1953, 40-6-12, enacted by L. 1983, ch. 205, § 1; 1985, ch. 94, § 3; 1986, ch. 47, § 21; 1987, ch. 161, § 121.

Amendment Notes. — The 1985 amendment substituted "chapter" for "act" throughout the section; inserted "of the rule or order" near the beginning of Subsection (1); added the second and third sentences of Subsection (1); added Subsections (1)(a) through (1)(f); inserted "enjoin or stay the effective date of agency action" in the second sentence of Subsection (2); added the third and fourth sentences of Subsection (2); inserted the internal designations (a), (b), and (c) in Subsection (3); substituted "may" for "shall" and "it is" for "same shall have been" in Subsection (4); and made minor changes in phraseology and punctuation.

The 1986 amendment added Subsection (5) and made various stylistic changes throughout the section.

The 1987 amendment, effective January 1, 1988, deleted former Subsections (1), (2) and (5) relating to judicial review, rewrote former

Subsection (3) and redesignated it as present Subsection (1), and redesignated former Subsection (4) as present Subsection (2) while substituting therein "the date" for "date."

40-6-13. Restrictions of production not authorized.

This act shall never be construed to require, permit or authorize the board or any court to make, enter or enforce any order, rule, regulation or judgment requiring restriction of production of any pool or of any well (except a well drilled in violation of Section 40-6-6 hereof) to an amount less than the well or pool can produce unless such restriction is necessary to prevent waste and protect correlative rights, or the operation of a well without sufficient oil or gas production to cover current operating costs and provide a reasonable return, without regard to original drilling costs.

History: C. 1953, 40-6-13, enacted by L. 1983, ch. 205, § 1.

Meaning of "this act". — The phrase "This act," used in this section, means Laws 1983, Chapter 205, which enacted this chapter. The reference should probably be to "This chapter".

40-6-14. Tax on oil and gas at well — Use — Collection — Penalty and interest on delinquencies — Payment when product taken in-kind — Interests exempt.

(1) There is levied and assessed a fee of .002 of the value at the well of all oil and gas:

(a) produced and saved;

(b) sold; or

(c) transported from the premises in Utah where the oil or gas is produced. In using the revenue collected from this fee, priority shall be given to paying the expenses of administration of this chapter. The State Tax Commission shall provide for the collection of these assessments.

(2) (a) A person shall pay a fee in proportion to his ownership interest at the time of production for any:

(i) working interest;

(ii) royalty interest;

(iii) payments out of production; or

(iv) any other interest in the oil or gas, or in the proceeds of the oil or gas, subject to the fee. The operator, on behalf of himself and all other interested persons, shall pay the assessed fee quarterly to the commission on or before the 45th day following the quarter in which the fee accrued.

(b) Any fee not paid within the time specified shall:

(i) carry a penalty as provided in Section 59-1-401; and

(ii) bear interest as provided in Section 59-1-402 from the date of delinquency until paid. The fee, together with the interest, shall be a lien upon the oil or gas against which it is levied and assessed. The person paying the fee shall deduct from any amounts due to the persons owning an interest in the oil or gas, or in the proceeds at the time of production, a proportionate amount of the charge before making payment to the persons.

(3) When product is taken in-kind by an interest owner who is not the operator and the operator cannot determine the value of the in-kind product, the operator shall:

(a) report 100% of the production;

(b) deduct the product taken in-kind; and

(c) pay the levy on the difference. The interest owner who takes the product in-kind shall file a report and pay the levy on his share of production excluded from the operator's report.

(4) This section shall apply to all interests in lands in the state except:

(a) the interest of the United States;

(b) the interest of the state and its political subdivisions in any oil or gas or in the proceeds;

(c) the interest of any Indian or Indian tribe in any oil or gas or in the proceeds produced from land subject to the supervision of the United States; or

(d) oil or gas used in producing or drilling operations or for repressuring or recycling purposes.

History: C. 1953, 40-6-14, enacted by L. 1983, ch. 205, § 1; 1985, ch. 94, § 4; 1985, ch. 165, § 44; 1986, ch. 61, § 1; 1987, ch. 3, § 3; 1988, ch. 62, § 2.

Amendment Notes. — The 1985 amendment by Laws 1985, ch. 94 designated the first two paragraphs as Subsections (1) and (2); rewrote Subsection (1) which formerly read as enacted by Laws 1983, chapter 203, § 1; substituted "Any person" for "The persons" at the beginning of Subsection (2); inserted "of the oil or gas" in the first sentence of Subsection (2); added Subsection (3); designated the former third paragraph as Subsection (4); and made minor changes in phraseology and punctuation.

The 1985 amendment by Laws 1985, ch. 165 substituted ".0004" for "two mills" in the first paragraph.

The 1986 amendment substituted ".002" for ".0004" in the first sentence of Subsection (1) and, in Subsection (4), deleted "of Utah" following "state" in the introductory language and Subsection (a) and deleted "of America" following "United States" in Subsection (a).

The 1987 amendment, effective February 6, 1987, in the third sentence of Subsection (2) substituted "as provided in § 59-1-401 and shall bear interest as provided in § 59-1-402" for "of 10% and shall bear interest at the rate of 1½% per month" and made minor changes in phraseology.

The 1988 amendment, effective April 25, 1988, subdivided and rewrote the first sentence of Subsection (1), which read "There is levied and assessed on the market value at the well of all oil and gas produced and saved, sold or transported from the premises in Utah where the oil or gas is produced a charge of .002 on the dollar value"; designated the first and second sentences of Subsection (2) as Subsection (2)(a) and rewrote the provision, which read "Any person owning an interest (working interest, royalty interest, payments out of production, or any other interest) in the oil or gas, or in the proceeds of the oil or gas, subject to the charge, is liable for the charge in proportion to his ownership at the time of production. The charge assessed shall be payable monthly and the sum due shall be remitted to the commission on or before the 30th of the month next following the month in which the charge accrued, by the operator on behalf of himself and all other interested persons"; and made other technical changes throughout the section to the extent that a detailed comparison is impracticable.

Retrospective Operation. Laws 1986, ch. 61, § 3 provides: "This act [which amends this section] has retrospective operation to January 1, 1986."

Laws 1987, ch. 3, § 59 provides: "This act has retrospective operation to January 1, 1987."

40-6-15. Division created — Functions — Director of division — Qualifications of program administrators.

There is created within the Department of Natural Resources the Division of Oil, Gas and Mining. The division shall implement the policies and orders of the board and perform all other duties delegated by the board.

The director of the Division of Oil, Gas and Mining shall be appointed by the director of the Department of Natural Resources with the concurrence of the Board of Oil, Gas and Mining. The director shall be the executive and administrative head of the Division of Oil, Gas and Mining and shall be a person experienced in administration and knowledgeable in the extraction of oil, gas and minerals.

Within the division, the person administering the oil and gas program shall have the technical background to efficiently administer that program. The person administering the mining program shall have the technical background to efficiently administer that program.

History: C. 1953, 40-6-15, enacted by L. 1983, ch. 205, § 1.

Sunset Act. — Section 63-55-7 provides that the Division of Oil, Gas and Mining terminates on July 1, 1993.

Cross-References. — Creation of Department of Natural Resources and boards and divisions within department, § 63-34-3.

Division directors, appointment, removal, compensation, § 63-34-6.

40-6-16. Duties of division.

In addition to the duties assigned by the board, the division shall:

(1) develop and implement an inspection program that will include but not be limited to production data, pre-drilling checks, and site security reviews;

(2) publish a monthly production report;

(3) publish a monthly gas processing plant report;

(4) review and evaluate, prior to a hearing, evidence submitted with the petition to be presented to the board;

(5) require adequate assurance of approved water rights in accordance with rules and orders enacted under Section 40-6-5; and

(6) notify the county commission in which the drilling will take place in writing of the issuance of a drilling permit.

History: C. 1953, 40-6-16, enacted by L. 1983, ch. 205, § 1; 1988, ch. 62, § 3.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "gas processing plant report" for "refinery and transportation report" in Subsection (3); substituted "Section 40-6-5" for "Subsection 40-6-5(1)(d)(v)"; and made minor stylistic changes.

40-6-17. Cooperative research and development projects.

The Board and the Division of Oil, Gas and Mining are authorized to enter into cooperative agreements with the national, state or local governments, and with independent organizations and institutions for the purpose of carrying out research and development experiments involving energy resources to the extent that the project is funded or partially funded and approved by the Legislature.

History: C. 1953, 40-6-17, enacted by L. 1983, ch. 205, § 1.

40-6-18. Lands subject to chapter.

This act shall apply to all lands in the State of Utah, lawfully subject to its police power, and shall apply to lands of the United States or the lands subject to the jurisdiction of the United States.

History: C. 1953, 40-6-18, enacted by L. 1983, ch. 205, § 1.

Meaning of "this act". — See note with same catchline in notes following § 40-6-13.

CHAPTER 7
OIL AND GAS COMPACT

40-7-1. Interstate compact to conserve oil and gas — Authority for governor to join.

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

History: L. 1957, ch. 131, § 1.

Compiler's Notes. — The original Interstate Compact to Conserve Oil and Gas, which was to expire September 1, 1937, was extended from time to time by the various states with the approval of Congress. The last extension by Congress was to September 1, 1971 and the compact has been permitted to expire.

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

Cross-References. — Oil and gas conservation generally, § 40-6-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d Gas and Oil § 158; 72 Am. Jur. 2d States, Territories, and Dependencies § 5.

A.L.R. — Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits, 10 A.L.R.3d 1226.

History: C. 1953, 40-6-17, enacted by L. 1983, ch. 205, § 1.

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A.L.R. — Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits, 10 A.L.R.3d 1226.

40-7-2. Authority for governor to execute extensions or withdraw from compact.

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

History: L. 1957, ch. 131, § 2.

40-7-3. Official representative — Assistant representative.

The governor shall be the official representative of the state of Utah on the "Interstate Oil Compact Commission" provided for in the compact to conserve oil and gas, and shall exercise and perform for the state all of the powers and duties as members of the Interstate Oil Compact Commission; provided, however, that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state of Utah as a member of said commission.

History: L. 1957, ch. 131, § 3.

CHAPTER 8
MINED LAND RECLAMATION

40-8-1. Short title.

This act shall be known and may be cited as the "Utah Mined Land Reclamation Act."

History: L. 1975, ch. 130, § 1.

Meaning of "this act". — "This act" at the beginning of the section means Laws 1975, Chapter 130, which now appears as §§ 40-6-3, 40-6-15, 40-6-16, 40-8-1 to 40-8-12, and 40-8-13 to 40-8-23. The reference should probably be to "this chapter."

Cross-References. — Application of act to coal mining and reclamation operations, § 40-10-4.

COLLATERAL REFERENCES

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

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

40-8-2. Legislative findings.

The Utah Legislature finds that:

(1) A mining industry is essential to the economic and physical well-being of the state of Utah and the nation.

(2) It is necessary to alter the surface of the earth to extract minerals required by our society, but this should be done in such a way as to minimize undesirable effects on the surroundings.

(3) Mined land should be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of the state and to provide for the subsequent use of the lands affected. Reclamation requirements must be adapted to the diversity of topographic, chemical, climatic, biologic, geologic, economic, and social conditions in the areas where mining takes place.

History: L. 1975, ch. 130, § 2.

40-8-3. Purpose.

The purpose of this act is to provide that from the effective date of the act, except as otherwise provided in this act, all mining in the state shall include plans for reclamation of the land affected.

History: L. 1975, ch. 130, § 3.

"Effective date of this act". — The phrase "effective date of this act" means the effective date of Laws 1975, Chapter 130, which became effective on May 13, 1975, except as provided in § 40-8-23.

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

40-8-4. Definitions.

As used in this chapter:

(1) (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to it, which has been approved under Section 40-8-13.

(b) An approved notice of intention is not required for small mining operations.

(2) "Board" means the Board of Oil, Gas and Mining.

(3) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters of the land from which any product useful to man may be produced, extracted, or obtained or which is extracted by underground mining methods for underground storage.

(b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas as defined in Chapter 6, Title 40, but includes oil shale and bituminous sands extracted by mining operations.

(4) "Development" means the work performed in relation to a deposit following its discovery but prior to and in contemplation of production mining operations, aimed at, but not limited to, preparing the site for mining operations, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

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

(6) (a) "Exploration" means surface-disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist.

(b) "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes and digging pits or cuts; building of roads, and other access ways; and constructing and operating other facilities related to these activities.

(7) "Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) on-site private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; and (k) work, parking, storage, or waste discharge areas, structures, and facilities. All lands shall be excluded that would otherwise be includable as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the board, and lands in which mining operations have ceased prior to July 1, 1977.

(8) (a) "Mining operation" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.

(b) "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas as defined in Chapter 6, Title 40; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; or reconnaissance activities and activities which will not cause significant surface resource disturbance or involve the use of mechanized earthmoving equipment such as bulldozers or backhoes.

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

(10) "Off-site" means the land areas that are outside of or beyond the on-site land.

(11) "On-site" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the division.

(12) "Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, or managing a mining operation or proposed mining operation.

(13) "Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, or managing a mineral deposit or the surface of lands employed in mining operations.

(14) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions.

(15) "Small mining operations" means mining operations which disturb or will disturb five or less surface acres at any given time.

History: L. 1975, ch. 130, § 4; 1986, ch. 190, § 1; 1987, ch. 147, § 1.

Amendment Notes. — The 1986 amendment added Subsection (17) and rewrote the section to the extent that a detailed comparison is impracticable.

The 1987 amendment alphabetized and renumbered the definitions in this section; added Subsection (1)(b); in Subsection (3)(b) inserted "sand, gravel, rock aggregate" preceding "water, geothermal steam, and oil"; in Subsection (6)(a) inserted "surface-disturbing" preceding "activities conducted for the purpose" and in Subsection (6)(b) deleted "ground surveys" preceding "sinking shafts"; in Subsection (8)(b) inserted "the extraction of sand, gravel, and rock aggregate" preceding "the extraction of oil and gas"; in Subsection (15) substituted "given time" for "time during the life of the operations" at the end of the subsection; omitted former Subsections (14) and (15) as last amended by Laws 1986, ch. 190, § 1; and made minor changes in phraseology and punctuation throughout the section.

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.

40-8-5. Authority to enforce chapter — Co-ordination of procedures — Department of Health.

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

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

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

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

Repeals and Reenactments. — Laws 1981, ch. 126, § 41 repealed former § 40-8-5 (L. 1975, ch. 130, § 6), relating to authority of the board and division of oil, gas, and mining, and enacted present § 40-8-5.

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

Board of State Lands and Forestry. — Laws 1988, Chapter 121 repealed § 65-1-1, which created the Board of State Lands, and enacted § 65A-1-2 to create the Board 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 Board of State Lands and Forestry.

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

40-8-6. Board — Powers, functions and duties.

In addition to those provided in Chapter 6, Title 40, the board has the following powers, functions, and duties:

(1) To enact rules according to the procedures and requirements of Chapter 46a, Title 63, that are reasonably necessary to carry out the purposes of this chapter.

(2) To hold hearings and to issue orders or other appropriate instruments based upon the results of those hearings.

(3) To issue emergency orders according to the requirements and provisions of Chapter 46b, Title 63.

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

History: L. 1975, ch. 130, § 7; L. 1987, ch. 161, § 122.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, deleted "(1)" preceding the introductory paragraph, redesignated former Subsections (a) through (d) as present Subsections (1) through (4), rewrote Subsections (1) and (3), and made minor changes in phraseology in Subsection (2).

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

40-8-7. Board and division — Authority — No retroactive effect for rules.

(1) The board and the division may require:

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

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

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

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

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

(f) that every operator who conducts mining operations in the state maintain suitable records and make periodic reports to the division in furtherance of the purposes of this chapter;

(g) that with respect to all mining operations, a notice of intention is filed with and, if required by this chapter, approved by the division before any such mining operations are commenced or continued pursuant to Section 40-8-23;

(h) the suspension of mining operations in case of emergency conditions;

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

(j) that mining operations be conducted so as to minimize or prevent hazards to public health and safety.

(2) No rule established by the board with respect to mined land reclamation shall have retroactive effect on existing reclamation plans included as a part of an approved notice of intention to commence mining operations which was approved prior to the effective date of the rule.

History: L. 1975, ch. 130, § 8; 1986, ch. 190, § 2; 1987, ch. 147, § 2.

Amendment Notes. — The 1986 amendment in Subsection (1) substituted "may" for "shall have the authority to"; in Subsection (1)(a) substituted "intention" for "intent"; in Subsection (1)(e) added the second and third sentences; in Subsection (1)(f) deleted "as may

be required" following "reports to the division"; in Subsection (1)(g) substituted "chapter, is" for "act, be"; and in Subsection (2) deleted "or regulations" following "No rule" and deleted "or regulations" following "the rule"; and made stylistic changes throughout the section.

The 1987 amendment in Subsection (1)(e) inserted "for mining operations other than small mining operations" at the beginning and deleted from the end "and small mining operations. These rules shall reflect and accommodate bonding constraints of small mining operations and exploration"; in Subsection (1)(f) deleted "under an approved notice of intent" following "conducts mining operations"; in Subsection (g) deleted "including reclamation plans prepared in accordance with this chapter" following "a notice of intention" and inserted "if required by this chapter"; inserted the present Subsection (1)(j); and made minor changes in phraseology and punctuation throughout the section.

"Effective date of this chapter". — The phrase "effective date of this chapter," referred to in Subsection (1)(d), means the effective date of Laws 1975, Chapter 130, which was May 13, 1975, except as provided in § 40-8-23.

40-8-8. Board authority to act — Entry of order — Confidential data — Proceedings in case of violations.

(1) The board may act by:

(a) filing a notice of agency action; or

(b) responding to a request for agency action initiated by any affected person.

(2) (a) The board shall enter its order within 60 days after the hearing.

(b) All orders entered by the board shall be:

(i) entered in books to be kept by the board for that purpose;

(ii) indexed; and

(iii) public records open for inspection at all times during reasonable office hours.

(c) Confidential data disclosed under this chapter shall be protected and not become public records, except as provided in Subsection 40-8-13(2).

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

(b) All persons known to be affected by the violation, and the alleged violators, shall be given opportunity to be heard.

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

(i) issue an abatement or compliance 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.

(d) In that suit, the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions.

(e) Failure to comply with the terms of any injunction or order issued by the court is prima facie evidence of contempt and is punishable by the imposition of a penalty not to exceed $1,000 per day for each day of contempt, in addition to any fine otherwise imposed for the violation of this chapter.

(4) If a suit is filed against an operator, and a preliminary injunction or temporary restraining order is issued that would result in an operator being

ordered to close his mining operation, the party instituting the lawsuit shall give security according to Rule 65A(c) of the Utah Rules of Civil Procedure.

History: L. 1975, ch. 130, § 9; 1987, ch. 161, § 123.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, rewrote former Subsection (1) so as to constitute present Subsections (1) and (2), deleted former Subsections (2), (3) and (5) relating to power to obtain evidence and suit to make board take action, and redesignated former Subsections (4) and (6) as present Subsections (3) and (4) while making minor changes in phraseology and punctuation therein.

40-8-9. Evasion of chapter or rules — Penalties — Limitations of actions.

(1) (a) Any person, owner, or operator who willfully or knowingly evades this chapter, or who for the purpose of evading this chapter or any rule or order issued under this chapter, willfully or knowingly makes or causes to be made any false entry in any report, record, account, or memorandum required by this chapter, or by the rule or order, or who willfully or knowingly omits or causes to be omitted from any report, record, account, or memorandum, full, true, and correct entries as required by this chapter, or by the rule or order, or who willfully or knowingly removes from this state or destroys, mutilates, alters, or falsifies any record, account, or memorandum, is guilty of a misdemeanor and, upon conviction, is subject to a fine of not more than $10,000 for each violation.

(b) Each day of willful failure to comply with an emergency order is a separate violation.

(2) No suit, action, or other proceeding based upon a violation of this chapter, or any rule or order issued under this chapter, may be commenced or maintained unless the suit, action, or proceeding is commenced within two years from date of the alleged violation.

History: L. 1975, ch. 130, § 10; 1985, ch. 94, § 5; 1986, ch. 47, § 22; 1987, ch. 161, § 124.

Amendment Notes. — The 1985 amendment substituted "chapter" for "act" throughout the section; added the last two sentences of Subsection (1); added Subsections (1)(a) through (1)(f); added the first sentence of Subsection (2); inserted "trial" in the second sentence of Subsection (2); deleted "regulation" after "rule" in the second sentence of Subsection (2); inserted "enjoin or stay the effective date of agency action" in the second sentence of Subsection (2); rewrote the final sentence of Subsection (2); inserted "be" before "omitted" in Subsection (3); substituted "the suit, action, or proceeding is" for "such shall have been" in Subsection (4); and made minor changes in phraseology and punctuation.

The 1986 amendment added a Subsection (5) and made various stylistic changes throughout the section.

The 1987 amendment, effective January 1, 1988, deleted former Subsections (1), (2) and (5) relating to judicial review, redesignated former Subsections (3) and (4) as present Subsections (1) and (2), while adding the paragraph designations in present Subsection (1) and deleting "regulation" following "rule" several times in the section.

40-8-10. Notice.

Except as otherwise provided in this chapter, any notification required by this chapter shall be given by the board or division by personal service to individuals directly affected and by one publication in a daily newspaper of general circulation in Salt Lake City, Utah, and in all newspapers of general

circulation published in the county or counties in which the land affected is situated.

History: L. 1975, ch. 130, § 11; 1987, ch. 161, § 125.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, substituted "chapter" for "act," made minor changes in phraseology, and deleted the former second through fifth sentences relating to notice and service of summons.

Cross-References. — Personal service, Rules of Civil Procedure, Rule 4.

40-8-11. Budget of administrative expenses — Procedure — Division authority to appoint or employ consultants.

(1) The division, with the approval of the board, shall prepare a budget of the administrative expenses in carrying out the provisions of this act for the fiscal year next following the convening of the Legislature. This budget shall be submitted to the executive director of the Department of Natural Resources for inclusion in the governor's appropriation request to the Legislature.

(2) The division shall have authority to appoint or employ technical support or consultants in the pursuit of the objectives of this act and shall be responsible for coordination with other agencies in matters relating to mined land reclamation and the application of related laws.

History: L. 1975, ch. 130, § 14; 1983, ch. 201, § 2.

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

40-8-12. Objectives.

The objectives of mined land reclamation are:

(1) to return the land, concurrently with mining or within a reasonable amount of time thereafter, to a stable ecological condition compatible with past, present, and probable future local land uses;

(2) to minimize or prevent present and future on-site or off-site environmental degradation caused by mining operations to the ecologic and hydrologic regimes and to meet other pertinent state and federal regulations regarding air and water quality standards and health and safety criteria; and

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

History: L. 1975, ch. 130, § 15; 1987, ch. 147, § 3.

Amendment Notes. — The 1987 amendment redesignated the provisions, formerly (1)(a) to (c); at the end of the opening clause substituted "are" for "shall be"; and made minor changes in punctuation and phraseology throughout the section.

40-8-12.5. Reclamation required.

Every operator shall be obligated to conduct reclamation and shall be responsible for the costs and expenses thereof.

History: C. 1953, 40-8-12.5, enacted by L. 1987, ch. 147, § 4.

40-8-13. Notice of intention required prior to mining operations — Assurance of reclamation required in notice of intention — When contents confidential — Approval of notice of intention not required for small mining operations — Procedure for reviewing notice of intention.

(1) (a) Before any operator begins mining operations, or continues mining operations pursuant to Section 40-8-23, he shall file a notice of intention for each individual mining operation with the division.

(b) The notice of intention for small mining operations shall include a statement that the operator shall conduct reclamation as required by rules promulgated by the board.

(c) The notice of intention for mining operations other than small mining operations shall include a plan for reclamation of the lands affected as required by rules promulgated by the board.

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

(3) (a) Within 30 days from the receipt of a notice of intention, the division shall complete its review of the notice and shall make further inquiries, inspections, or examinations that are necessary to properly evaluate the notice.

(b) The division shall notify the operator of any objections to the notice and shall grant the operator a reasonable opportunity to take action that may be required to remove the objections or obtain a ruling relative to the objections from the board.

(4) Approval of a notice of intention for small mining operations is not required.

(5) The notice of intention for mining operations other than small mining operations, shall be reviewed as provided in this subsection.

(a) Within 30 days after receipt of a notice of intention or within 30 days following the last action of the operator or the division on the notice of intention, the division shall make a tentative decision to approve or disapprove the notice of intention.

(b) The division shall:

(i) mail the information relating to the land affected and the tentative decision to the operator; and

(ii) publish the information and the decision, in abbreviated form, one time only, in all newspapers of general circulation published in the county where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

(c) The division shall also mail a copy of the abbreviated information and tentative decision to the zoning authority of the county in which the land affected is situated and to the owner of record of the land affected.

(d) (i) Any person or agency aggrieved by the tentative decision may file a request for agency action with the division.

(ii) If no requests for agency action are received by the division within 30 days after the last date of publication, the tentative decision on the notice of intention is final and the division shall notify the operator.

(iii) If written objections of substance are received, the division shall hold a formal adjudicative proceeding.

(e) Subsection (5) does not apply to exploration.

(6) Within 30 days after receipt of a notice of intention concerning exploration operations other than small mining operations, the division will review the notice of intention and approve or disapprove it.

History: L. 1975, ch. 130, § 16; 1986, ch. 190, § 3; 1987, ch. 147, § 5; 1987, ch. 161, § 126.

Amendment Notes. — The 1986 amendment, in Subsection (1), in the second sentence deleted "and regulations" following "rules" and in the third sentence substituted "is not" for "shall not be"; in Subsection (2), substituted "which are marked" for "and marked"; in Subsection (4), divided the former first sentence into the present first and second sentences, in the present first sentence substituted "a notice" for "the notice," in the present second sentence inserted "then," deleted "be" preceding "published, in abbreviated form" and deleted "or counties" following "the county," in the present third sentence deleted "or counties" following "the county" and deleted "or owners" following "the owner," in the present fifth sentence substituted "is final" for "shall become final," and added the last sentence; added Subsection (5); and made stylistic changes throughout the section.

The 1987 amendment, by Chapter 147, in Subsection (1) designated the former second sentence as Subsection (a), inserted the present Subsection (b) and substituted the present Subsection (c) for the former third sentence as last amended by Laws 1986, ch. 190, § 3; inserted the present Subsection (4) as Subsection (5) and added the present first sentence; designated former Subsection (5) as present Subsection (6) and in that subsection inserted "operations other than small mining operations" near the middle; and made minor changes in phraseology and punctuation throughout the section.

The 1987 amendment, by Chapter 161, effective January 1, 1988, added the paragraph designations in Subsections (1) and (3), substituted "agency action" for "intention" several times throughout the section, deleted the former second sentence of Subsection (1) relating to the form of notice, rewrote Subsection (4)(d), and made minor changes in phraseology and punctuation.

Compiler's Notes. — Laws 1987, ch. 147, § 10 provided that in § 40-8-13 of this bill, the term "notice of intention" shall be preserved and shall amend and replace the term "notice of agency action" as contained in § 40-8-13 of Laws 1987, ch. 161, § 126.

COLLATERAL REFERENCES

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

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

(1) After receiving notification that a notice of intention for mining operations other than small mining operations has been approved, but prior to commencement of such operations, the operator shall provide surety to the division, in a form and amount determined by the board.

(2) In determining the amount of surety to be provided, the board shall consider factual information and recommendations provided by the division as to the magnitude, type, and costs of approved reclamation activities planned for the land affected and the nature, extent, and duration of operations under

the approved notice. The board shall approve a fixed amount estimated as required at any point in time covered by the notice of intent to complete reclamation to an acceptable standard.

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

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

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

(6) If the operator of a small mining operation fails or refuses to carry out the necessary land reclamation as required by this chapter and the rules of the board, the board, after notice and hearing, may order that:

(a) reclamation be conducted by the division; and

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

(7) If the operator of a mining operation other than a small mining operation fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited. With respect to the surety filed with the division, the board shall request the attorney general to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of State Lands [Division of State Lands and Forestry] or an agency of the federal government, the board shall certify a copy of the transcript of the hearing to the division or such agency, together with a request that the necessary forfeiture action be taken. The forfeited surety shall be used only for the reclamation of the land to which it relates, and any residual amount returned to the rightful claimant.

History: L. 1975, ch. 130, § 17; 1987, ch. 147, § 6.

Amendment Notes. — The 1987 amendment in Subsection (1) inserted "for mining operations other than small mining operations" following "that a notice of intention," added the present Subsection (6), redesignated the former Subsection (6) as the present (7), in Subsection (7) inserted in the first sentence "of a mining operation other than a small mining operation" following "if the operator" and made minor changes in phraseology and punctuation throughout the section.

Division of State Lands and Forestry. — Laws 1988, Chapter 121 repealed § 65-1-2.1, which created the Division of State Lands, 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.

40-8-15. Notice of commencement to division — Operations and progress report.

(1) Within 30 days after commencement of mining operations under an approved notice of intention, the operator shall give notice of such commencement to the division.

(2) At the end of each calendar year, unless waived by the division, each operator conducting mining operations under an approved notice of intention shall file an operations and progress report with the division on a form prescribed in the rules promulgated by the board.

History: L. 1975, ch. 130, § 18; 1987, ch. 147, § 7.

Amendment Notes. — The 1987 amendment deleted "and regulations" following "rules" near the end of Subsection (2) and made a minor stylistic change.

40-8-16. Approved notice of intention valid for life of operation — Withdrawal, withholding, or refusal of approval — Procedure and basis.

(1) An approved notice of intention or approved revision of it remains valid for the life of the mining operation, as stated in it, unless the board withdraws the approval as provided in Subsection (2).

(2) The board or the division shall not withdraw approval of a notice of intention or revision of it, except as follows:

(a) Approval may be withdrawn in the event that the operator substantially fails to perform reclamation or conduct mining operations so that the approved reclamation plan can be accomplished.

(b) Approval may be withdrawn in the event that the operator fails to provide and maintain surety as may be required under this chapter or fails to remain financially responsible under Subsection 40-8-13(1).

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

(3) Approval of a notice of intention may not be refused, withheld, nor withdrawn by the division until the operator, who holds or has applied for such approval, has had an opportunity to request a hearing before the board, present evidence, cross-examine, and participate fully in the proceedings. Based on the record of the hearing, the board will issue an order concerning the refusal, withholding, or withdrawal of the notice of intention. If no hearing is requested, the division may refuse, withhold, or withdraw approval of a notice of intention.

(4) In the event that the division or the board withdraws approval of a notice of intention or its revision, all mining operations included under the notice shall be suspended in accordance with procedures and schedule approved by the division.

History: L. 1975, ch. 130, § 19; 1986, ch. 190, § 4.

Amendment Notes. — The 1986 amendment in Subsection (2)(c) substituted "five" for "two"; in Subsection (3) added the second and third sentences, and in the present first sentence substituted "notice of intention may" for "notice shall," substituted "until" for "or the board until after a duly called hearing at which," and substituted "request a hearing before the board" for "appear"; and made stylistic changes throughout the section.

Compiler's Notes. — The provision in Subsection 40-8-13(1) relating to financial responsibility, referred to in Subsection (2)(b), was deleted from § 40-8-13 by Laws 1987, Chapter 147. The deleted provision read, "In connection with the notice the operator shall furnish evidence, in the form of acceptable insurance policies or other factual data, that the operator will be financially responsible during the proposed mining operations for the payment of offsite public liability or property damage claims for which he may become liable."

40-8-17. Responsibility of operator to comply with applicable rules, regulations and ordinances — Inspections.

(1) The approval of a notice of intention shall not relieve the operator from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances, including but not limited to, those applying to safety, air and water pollution, and public liability and property damage.

(2) As a condition of consideration and approval of a notice of intention, each applicant or operator under a notice of intention shall permit members of the board, the division, or other state agency having lawful interest in the administration of this act, to have the right, at all reasonable times, to enter the affected land and all related properties included in the notice of intention, whether or not approved, to make inspections for the purposes of this act.

History: L. 1975, ch. 130, § 20.

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

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

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

(2) The notice of intention to revise mining operations will be designated as an amendment to the existing notice of intention by the division, based on rules promulgated by the board. An amendment of a notice of intention will be reviewed and considered for approval or disapproval by the division within 30 days of receipt of a notice of intention to revise mining operations.

(3) A notice of intention to revise mining operations, if not designated as an amendment of a notice of intention, as set forth in Subsection 40-8-18(2), shall be processed and considered for approval by the division in the same manner and within the same time period as an original notice of intention. The operator shall be authorized and bound by the requirements of his existing notice until the revision is acted upon and any revised surety requirements are established and satisfied.

(4) Small mining operations shall submit an amendment to the notice of intention when changes in the operations occur. Approval of an amendment of small mining operations is not required.

History: L. 1975, ch. 130, § 21; 1986, ch. 190, § 5; 1987, ch. 147, § 8.

Amendment Notes. — The 1986 amendment in Subsection (1), first sentence, substituted "revision" for "amendment," substituted "or developing technology" for "and developing technology" and deleted ", at his election," following "notice of intention may," and in the second sentence deleted "and regulations" following "rules"; inserted present Subsection (2) and redesignated former Subsection (2) as present Subsection (3); in present Subsection (3), divided the former language into two sentences, in the present first sentence inserted ", if not designated as an amendment of a notice of intention, as set forth in Subsection 40-8-18(2)," and inserted "and within the same time period."

The 1987 amendment added the present Subsection (4) and made minor changes in phraseology and punctuation in Subsection (1).

40-8-19. Transfer of mining operation under approved notice of intention.

Whenever an operator succeeds to the interest of another operator who holds an approved notice of intention or revision covering a mining operation, by sale, assignment, lease, or other means, the division may release the first operator from his responsibilities under his approved notice of intention, including surety, provided the successor assumes all of the duties of the former operator, to the satisfaction of the division, under this approved notice of intention, including its then approved reclamation plan and the posting of surety. Upon the satisfactory assumption of such responsibilities by the successor operator, under conditions approved by the division, the approved notice of intention shall be transferred to the successor operator.

History: L. 1975, ch. 130, § 22.

40-8-20. Applicability.

This act shall apply to all lands in the state of Utah lawfully subject to its police power. No political subdivision of this state shall enact laws, regulations, or ordinances which are inconsistent with this act.

History: L. 1975, ch. 130, § 23.

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

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

(1) In the case of a temporary suspension of mining operations, excluding labor disputes, expected to be in excess of five years' duration, the operator shall, within 30 days, notify the division.

(2) In the case of a termination of mining operations or a suspension of such operations expected to extend for a period in excess of two years, the operator shall furnish the division with such data as it may require in order to evaluate the status of the mining operation, performance under the reclamation plan, and the probable future status of the mineral deposit and condition of the land affected.

(3) Upon receipt of notification of termination or extended suspension, the division shall, within 30 days, cause an inspection to be made of the property and take whatever action may be appropriate in furtherance of the purposes of this chapter.

(4) The full release by the division of surety posted under an approved notice of intention shall be prima facie evidence that the operator has fully complied with the provisions of this chapter.

History: L. 1975, ch. 130, § 24; 1987, ch. 147, § 9.

Amendment Notes. — The 1987 amendment in Subsection (1) substituted "five years' duration" for "six months, but not less than two years" and made minor changes in phraseology and punctuation throughout the section.

40-8-22. Division co-operation — Agreements.

(1) The division shall co-operate with other state agencies, local governmental bodies, agencies of the federal government, and appropriate private interest in the furtherance of the purposes of this act.

(2) The division is authorized to enter into co-operative agreements with these agencies, as may be approved by the board, in furtherance of the purposes of this act and may accept or commit funds in connection thereto as may be appropriated or otherwise provided for the purpose and as specifically approved by the board, except that such actions shall not result in any delegation of powers, responsibility, or authority conferred upon the board or division by this act.

History: L. 1975, ch. 130, § 25.

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

40-8-23. Effective dates — Exceptions.

This act shall become effective sixty days after adjournment of the Legislature except as follows:

(1) Mining operations which are active on the effective date of this act will be required to prepare and submit a notice of intention on or before July 1, 1977, and shall be authorized to continue such existing operations until the operator obtains approval of his notice of intention. Such approval shall be obtained by the operator within 36 months from the date of submission of this notice. Subsequent to approval of the notice of intention, the operator shall be bound by the provisions of the approved notice of intention and surety requirements as provided in Section 40-8-13 [and Section 40-8-14].

(2) Mining operations which are active on the effective date of this act and which are suspended or terminated on or before July 1, 1977, shall advise the division of this fact before July 10, 1977, and shall not be required to submit a notice of intention.

(3) Mining operations which are inactive on the effective date of this act and which resume operations on or before July 1, 1977, shall be required to prepare and submit a notice of intention within twelve months following the effective date of this act or within six months of the resumption of such operations, whichever is earlier, and shall be authorized to

conduct operations as described in the notice of intention until the operator obtains approval of his notice of intention. Such approval shall be obtained by the operator within 36 months from the date of submission of the notice. Subsequent to approval of the notice of intention the operator shall be bound by the provisions of the approved notice of intention and surety requirements as provided in Section 40-8-13 [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

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.