

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1843
STATE ENFORCEMENT

Section

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AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 5932; amended at 9 Ill. Reg. 13334, effective October 10, 1985; amended at 11 Ill. Reg. 8536, effective July 1, 1987; amended at 14 Ill. Reg. 11906, effective January 1, 1991; amended at 17 Ill. Reg. 11095, effective July 1, 1993; amended at 20 Ill. Reg. 2136, effective January 19, 1996; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 22 Ill. Reg. 7712; amended at 26 Ill. Reg. 4367, effective March 6, 2002.

Section 1843.11 Cessation Orders

- a) Imminent harm and danger
 - 1) An authorized representative of the Illinois Department of Natural Resources (Department) shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he finds, on the basis of any State inspection, any condition or practice, or any violation of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (Federal Act), the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2,

pars. 7901.01 et seq.) (State Act), 62 Ill. Adm. Code 1700 - 1850 or any condition of an exploration approval or permit imposed under the Federal Act, the State Act or 62 Ill. Adm. Code 1700 - 1850 which:

- A) Creates an imminent danger to the health or safety of the public; or
 - B) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.
- 2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:
- A) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
 - B) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State of Illinois.
- 3) If the cessation order under subsection (a)(1) will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Department shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.
- b) Failure to abate
- 1) An authorized representative of the Department shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the relevant portion thereof, when a notice of violation has been issued under Section 1843.12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.
 - 2) A cessation order issued under subsection (b)(1) shall require the person to whom it is issued to take all steps the authorized representative of the Department deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

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- c) A cessation order issued under subsections (a) or (b) shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:
- 1) The nature of the condition, practice or violation;
 - 2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
 - 3) The time established for abatement, if appropriate, including the time for meeting any interim steps; and
 - 4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice, or violation has been abated or until vacated, modified, or terminated in writing by an authorized representative of the Department or until the order expires pursuant to Section 1843.15.
- d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.
- e) An authorized representative of the Department may modify, terminate, or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.
- f) An authorized representative of the Department shall terminate a cessation order, by written notice to the person to whom the order was issued, when he determines that all conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the Department to assess civil penalties for those violations under 62 Ill. Adm. Code 1845.
- g) Within sixty (60) days after issuing a cessation order, the Department shall notify in writing any person who has been identified under 62 Ill. Adm. Code 1773.17(h) and 1778.13(c) and (d) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

(Source: Amended at 14 Ill. Reg. 11906, effective January 1, 1991)

Section 1843.12 Notices of Violation

- a) An authorized representative of the Department shall issue a notice of violation if, on the basis of a State inspection carried out during the enforcement of a State

program, he or she finds a violation of the Federal Act, the State Act, or 62 Ill. Adm. Code 1700 - 1850 which does not create an imminent danger or harm for which a cessation order must be issued under Section 1843.11.

- b) A notice of violation issued under this Section shall be in writing, signed by the authorized representative who issued it, and shall set forth with reasonable specificity:
 - 1) The nature of the violation;
 - 2) The remedial action required, which may include interim steps;
 - 3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and
 - 4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.
- c) An authorized representative of the Department may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed ninety (90) days from the date of issuance, except upon a showing by the person to whom the notice was issued that, despite extraordinary efforts, it is not possible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances in subsection (f). An extended abatement date pursuant to this subsection shall not be granted when the failure or inability to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the person to whom the notice was issued in completing the remedial action required.
- d) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under Section 1843.11(b).
- e) An authorized representative of the Department shall terminate a notice of violation by written notice to the person to whom it was issued, when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Department to assess civil penalties for those violations under 62 Ill. Adm. Code 1845.
- f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than ninety (90) days are:

- 1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within ninety (90) days after a valid permit expires or is required, for reasons not within the control of the permittee;
 - 2) Where there is a valid judicial or administrative order precluding abatement within ninety (90) days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;
 - 3) Where the permittee cannot abate within ninety (90) days due to a labor dispute;
 - 4) Where climatic conditions preclude abatement within ninety (90) days; or where, due to climatic conditions, abatement within ninety (90) days clearly would cause more environmental harm than it would prevent;
 - 5) Where abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 - 960); or
 - 6) Where abatement of the violation within ninety (90) days would create an imminent danger to the health or safety of the public or would cause, or could reasonably be expected to cause, significant imminent environmental harm to land, air, or water resources.
- g) Whenever an abatement time in excess of ninety (90) days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.
- h) If any of the conditions in subsection (f) above exists, the permittee may request the authorized representative to grant an abatement period exceeding ninety (90) days. The authorized representative shall not grant such an abatement period without the concurrence of the Division Supervisor or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of subsections (c) and (f) above. In determining whether or not to grant an abatement period exceeding ninety (90) days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review that document before concurring in or

disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.i) Any determination made by the Department under subsection (h) shall provide for a right of appeal in accordance with 62 Ill. Adm. Code 1847.4.

- j) No extension granted under subsection (h) above may exceed ninety (90) days in length. Where the condition or circumstances which prevented abatement within ninety (90) days exists at the expiration of any such extension, the permittee may request a further extension, in accordance with the procedures of subsection (h) above.

(Source: Amended at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1843.13 Suspension or Revocation of Permits

- a) Requirements.
 - 1) The Department shall issue an order to a permittee requiring him to show cause why his permit and right to mine under the State Act should not be suspended or revoked, if the Department determines that a pattern of violations of any requirements of the Federal Act, the State Act, or 62 Ill. Adm. Code 1700 through 1850 or any permit condition exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.
 - 2) The Department may determine that a pattern of violations exists or has existed, based upon 2 or more inspections of the permit area within any 12 month period, after considering the circumstances, including:
 - A) The number of violations, cited on more than one occasion, of the same or related requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 through 1850 or the permit;
 - B) The number of violations, cited on more than one occasion of different requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 through 1850 or the permit; and
 - C) The extent to which the violations were isolated departures from lawful conduct.

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- 3) The Department shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 through 1850 or the permit during 3 or more State inspections of the permit area within any 12 month period. If, after such review, the Department determines that a pattern of violations exists or has existed, an order to show cause as provided in subsection (a)(1) above shall be issued.
 - 4) Considerations.
 - A) In determining the number of violations within any 12 month period, the Department shall consider only violations issued as a result of a State inspection carried out:
 - i) During the permanent regulatory program; or
 - ii) During the interim regulatory program and before the applicable State program was approved, pursuant to Section 502 or 504 of the Federal Act.
 - B) The Department may not consider violations issued as a result of inspections other than those mentioned in subsection (a)(4)(A)(i) above in determining whether to exercise discretion under subsection (a)(2) above.
 - b) Whenever a permittee fails to abate a violation contained in a notice of violation or a cessation order within the abatement period set in the notice or order or as subsequently extended, the Director or his or her designee shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this Section, and shall issue as appropriate an order to show cause, which shall be subject to a hearing under 62 Ill. Adm. Code 1847.6.
 - c) At the same time as the issuance of the order, the Department shall:
 - 1) If practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations;
 - 2) Post the notice at the regional, district or field office closest to the area of the surface coal mining and reclamation operation; and
 - 3) Notify in writing the surety or other bond holder of the issuance of the order.

- d) The permittee shall have 30 days from the completion of service of a show cause order in which to file an answer and request a hearing in accordance with 62 Ill. Adm. Code 1847.6.
- e) If the Department revokes or suspends the permit and the permittee's right to mine the permittee shall immediately cease surface coal mining operations on the permit area and shall:
 - 1) If the permit and the right to mine are revoked, complete reclamation within the time specified in the order; or
 - 2) If the permit and the right to mine are suspended, complete all affirmative obligations to abate all conditions, practices, or violations, as specified in the order.

(Source: Amended at 26 Ill. Reg. 4367, effective March 6, 2002)

Section 1843.14 Service of Notices of Violation, Cessation Orders, and Show Cause Orders

- a) A notice of violation, cessation order or show cause order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:
 - 1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be deemed complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.
 - 2) As an alternative to subsection (a)(1) above, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint in the Illinois Circuit Courts. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

- b) The designation of an agent for service of notices and orders shall be made in writing to the Department.
- c) The Department shall furnish copies of the notice or order to any person on request.

(Source: Amended at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1843.15 Informal Public Hearing

- a) Except as provided in subsections (b) and (c), a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within thirty (30) days after it is served unless an informal public hearing, if not waived, has been held within that time. The informal public hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Department and the person to whom the notice or order was issued. Expiration of a notice or order shall not affect the Department's right to assess civil penalties with respect to the period of time during which the notice or order was in effect, pursuant to 62 Ill. Adm. Code 1845. For the purposes of Section 1843.15 only, "mining" includes:
 - 1) Extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and
 - 2) The processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.
- b) A notice of violation or cessation order shall not expire as provided in subsection (a) above, if the condition, practice or violation in question has not been abated, if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than thirty (30) days after the notice or order was served. For purposes of this subsection:
 - 1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:
 - A) Is informed, by written notice served in the manner provided in subsection (b)(2) below, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within thirty (30) days after service of the notice; and
 - B) Fails to request an informal public hearing within that time.

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- 2) The written notice referred to in subsection (b)(1)(A) above shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five (5) days after the notice or order is served on such person.
 - 3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the twenty-first (21st) day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the twenty-first (21st) day.
- c) The Department shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:
 - 1) The person to whom the notice or order was issued; and
 - 2) Any person who filed a report which led to that notice or order.
 - d) The Department shall also post notice of the hearing at the Department's office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.
 - e) An informal public hearing shall be conducted by a representative of the Department, who may accept oral or written arguments and any other relevant information from any person attending.
 - f) Within five (5) days after the close of the informal public hearing, the Department shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:
 - 1) The person to whom the notice or order was issued; and
 - 2) Any person who filed a report which led to the notice or order.
 - g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Sections 8.04(b), 8.06(d), or 8.07 of the State Act. At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing shall be introduced as evidence or to impeach a witness.
 - h) The person conducting the hearing for the Department shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a review of the mine site

will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

(Source: Amended at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1843.16 Formal Review of Citations (Repealed)

(Source: Repealed at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1843.17 Temporary Injunctive Relief (Repealed)

(Source: Repealed at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1843.18 Inability to Comply

- a) No cessation order or notice of violation issued under this Part may be vacated because of inability to comply.
- b) Inability to comply may not be considered in determining whether a pattern of violations exists.
- c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under 62 Ill. Adm. Code 1845 and of the duration of the suspension of a permit under Section 1843.13(e).

Section 1843.20 Intervention (Repealed)

(Source: Repealed at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1843.21 Discovery (Repealed)

(Source: Repealed at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1843.22 Petitions for Award of Costs and Expenses Under Section 525(e) of the Federal Act

- a) Who may file. Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the State Act which results in a final order being issued by the Department.
- b) Where to file; time for filing. The petition for an award of costs and expenses including attorneys' fees must be filed with the Department within forty-five (45)

days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

- c) Contents of petition. A petition filed under Section 1843.22 shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:
 - 1) An affidavit setting forth in detail all costs and expenses including attorney's fees reasonably incurred for, or in connection with, the person's participation in the proceeding;
 - 2) Receipts or other evidence of such costs and expenses; and
 - 3) Where attorney's fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.
- d) Answer. Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.
- e) Appropriate costs and expenses including attorney's fees may be awarded:
 - 1) To any person from the permittee if:
 - A) The person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the State Act, regulations or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the hearing officer determines that the person made a substantial contribution to the full and fair determination of the issues; or
 - B) The person initiates or participates in any proceeding under the State Act upon a finding that the person made a substantial contribution to a full and fair determination of the issues.
 - 2) To a permittee from the Department when the permittee demonstrates that the Department issued a cessation order, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee; or
 - 3) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under Section 8.07 of the State Act or

participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

- 4) To the Department where it demonstrates that any person applied for review pursuant to Section 8.07 of the State Act or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the Department.
- f) Awards. An award under these Sections may include:
- 1) All costs and expenses, including attorneys' fees; and
 - 2) Expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the State Act.

(Source: Amended at 11 Ill. Reg. 8536, effective July 1, 1987)

Section 1843.23 Enforcement Actions at Abandoned Sites

The Department may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in 62 Ill. Adm. Code 1840.11(g), if abatement of the violation is required under any previously issued notice or order.

(Source: Added at 20 Ill. Reg. 2136, effective January 19, 1996)