

49-405. Powers and authority of secretary. The secretary shall have and exercise the following authority and powers which shall be enforced and administered by the secretary: (a) To adopt rules and regulations respecting the administration of this act and in conformity therewith and to adopt rules and regulations which may be necessary for the secretary to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto and may adopt and enforce all standards established by such federal rules and regulations. Prior to adoption of such rules and regulations, the secretary shall give not less than 30 days advance public notice by publication in a newspaper or newspapers of general circulation in each county in which coal mining operations are being conducted. And provide in such notice for not less than one public hearing at a place within a county wherein coal mining operations are being conducted, and for a period of not less than 30 days prior to adoption of such rules and regulations, during which written public comments may be filed with the secretary.

(b) To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface types of mining and reclamation and conservation of lands and waters affected by surface types of mining.

(c) To examine and pass upon all plans and specifications submitted by the operator for the method of operation and for the reclamation and conservation of the area of land affected by the operation.

(d) To make investigations and inspections which may be deemed necessary to insure compliance with the provisions and intent of this act, and to require by rules and regulations such reporting, monitoring and record keeping requirements as are required by the national surface mining control and reclamation act of 1977 (public law 95-87). Authorized representatives of the department shall have the right, without advance notice and upon presentation of credentials, to enter upon any surface coal mining and reclamation operations or any premises in which records required to be maintained are kept and, at reasonable times and without delay, may have access to and copy any records, or inspect any monitoring equipment or method of operation under this act. The secretary shall have all authority concerning such activity as is required by the national surface mining control and reclamation act of 1977 (public law 95-87).

(e) To order the suspension of any permit and order to cease and desist operations for failure to comply with any of the provisions of this act.

(f) To order the stopping of any operation that is started without first having secured a permit as required by this act.

(g) To conduct hearings under provision of this act and for the purpose of any investigation or hearing, the secretary or the secretary's designee may administer oaths or affirmation, subpoena witnesses relevant to the inquiry. The secretary shall adopt rules and regulations concerning the conduct of hearings consistent with and in compliance with the national surface mining control and reclamation act of 1977 (public law 95-87).

(h) To order an operator to adopt such remedial measures as are necessary to comply with this act.

(i) To issue, after a hearing, a final order directing the revocation of a permit when any remedial action ordered has not been taken.

(j) To apply for and receive grants of funds from federal agencies.

(k) To request from and receive from state agencies technical assistance in administering the provisions of this act.

(l) To perform such other duties and functions as may be required by the provisions of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto in order to qualify to administer the initial and permanent regulatory programs adopted by the United States department of interior, office of surface mining reclamation and enforcement, pursuant to such act, and to prohibit mining where reclamation required by such act is not feasible.

(m) (1) When, on the basis of any inspection, the secretary or the secretary's designee determines that any condition or practices exist, or that any operator is in violation of any requirement of this act or any permit condition required by this act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the secretary or the secretary's designee immediately shall order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the secretary or the secretary's designee determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the secretary or the secretary's designee. Where the secretary finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the secretary in addition to the cessation order, shall impose affirmative obligations on the operator requiring the operator to take whatever steps the secretary deems necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the secretary or the secretary's designee determines that any operator is in violation of any requirement of this act or any permit condition required by this act, but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the secretary or the secretary's designee shall issue a notice to the operator or the operator's agent fixing a reasonable time but not more than 90 days for the abatement of the violation and providing opportunity for public hearing.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the secretary or the secretary's designee, the secretary or the secretary's designee finds that the violation has not been abated, the secretary immediately shall order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the secretary or the secretary's designee determines that the violation has been abated, or until modified, vacated, or terminated. In the order of cessation issued by the secretary under this subsection, the secretary shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the secretary or the secretary's designee determines that a pattern of violations of any requirements of this act or any permit conditions required by this act exists or has existed, and if the

secretary or the secretary's designee also finds that such violations are caused by the unwarranted failure of the operator to comply with any requirements of this act or any permit conditions, or that such violations are willfully caused by the operator, the secretary or the secretary's designee shall issue an order to the operator to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the secretary shall inform all interested parties of the time and place of the hearing. Upon the operator's failure to show cause as to why the permit should not be suspended or revoked, the secretary or the secretary's designee shall suspend or revoke the permit.

(4) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the operator or the operator's agent by the secretary or the secretary's designee and all such notices and orders shall be in writing and shall be signed by the secretary or the secretary's designee. Any notice or order issued pursuant to this section may be modified, vacated or terminated by the secretary or the secretary's designee. Any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

The attorney general upon the attorney general's own initiative or, at the request of the secretary, shall secure enforcement of the orders of the secretary and the provisions of this act, through mandamus, injunction, by action to compel specific performance of an order, or by other appropriate relief. Such proceedings shall be initiated by the filing of a petition in the district court of Shawnee county, together with a transcript of the record of the hearing before the secretary or the secretary's designee, if a hearing has been held, and issuance and service of a copy of the petition as in civil actions. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings an order or decree, enforcing, modifying and enforcing, as so modified, or setting aside in whole or in part the order of the secretary.

History: L. 1968, ch. 395, § 5; L. 1978, ch. 208, § 4; L. 1979, ch. 169, § 3; L. 1988, ch. 192, § 9; July 1.