

350.130 Notice of noncompliance -- Revocation of permit -- Bond forfeiture -- Ineligibility for future permits -- Notice or order effective upon delivery.

- (1) When any of the requirements of this chapter or administrative regulations adopted pursuant thereto or the orders of the cabinet have not been complied with, the cabinet shall forthwith cause a notice of noncompliance to be issued upon the permittee, person, or operator. The cabinet shall set forth in its notice a reasonable time period but not more than ninety (90) days for the abatement of the violation. If any permittee, person, or operator has not abated the violation within the time prescribed in the notice of noncompliance, the secretary or other authorized personnel of the cabinet shall issue to the permittee, operator, or person an order for immediate compliance and cessation of any mining activities or operations which are contributing to the violation. The order shall require the permittee, person, or operator to abate the violation in the most expeditious manner possible. The secretary is authorized to promulgate reasonable administrative regulations for the implementation of this section. The notice or order shall be handed to the person in charge of the operation and the operator or person engaged in coal exploration operations or sent by certified mail, return receipt requested, addressed to the permanent address shown on the application for a permit; or by electronic mail to the address shown on the permit application or otherwise voluntarily provided to the cabinet by the permittee on a form prepared by the cabinet; or, if no address is shown on the application, then by certified or electronic mail to the address known to the cabinet. The notice of noncompliance or order for immediate compliance and cessation shall specify in what respects the permittee, person, or operator has failed to comply with this chapter or the regulations or orders of the cabinet 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. If the permittee, person, or operator has not reached an agreement with the cabinet or has not complied with the requirements set forth in the notice of noncompliance or order for immediate compliance and cessation within time limits set therein, the permit may be revoked or the operation terminated, after an opportunity for a hearing, by order of the cabinet, and the performance bond, if any, shall then be forfeited to the cabinet, provided that failure to attend a hearing shall be excused for good cause shown. Any bonding company or financial institution providing bond to the cabinet shall have the right to perform those measures necessary to secure bond releases if the bonding company or financial institution can demonstrate that it has the ability to perform the measures and will undertake to do so within a reasonable time frame. The bonding company, or financial institution providing the bond, may, at any stage of the reclamation process, pay the remaining encumbered balance of the bond and thereby discharge its obligation under the bond. Neither the surety company nor the financial institution may employ anyone to perform the measures who has been barred from mining pursuant to the provisions of this chapter.
- (2) When a bond is forfeited consistent with the provisions of this chapter, the cabinet shall forfeit the entire amount of the bond for the permit area or increment.

- (3) A permittee, operator, or person whose mining permit or operation has been revoked, suspended, or terminated or is at the time of the application in violation of this chapter or other applicable requirements as set forth in KRS 350.085 shall not be eligible to receive another permit or begin another operation or to have suspended permits or operations reinstated until he shall have complied with all the requirements of this chapter or submitted proof satisfactory to the cabinet under KRS 350.085 that the violation has been corrected or is in the process of being corrected in respect to all permits issued him, provided, further, that no permittee, operator, or person shall be eligible to receive another permit or begin another operation who has forfeited any bond unless the land for which the bond was forfeited has been reclaimed without cost to the state or the permittee, operator, or person has paid such sum as the cabinet finds is adequate to reclaim the lands. The cabinet shall not issue any permits to or allow future operations by any permittee, operator, or person who has demonstrated a pattern of willful violations of this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter, provided that no permit shall be denied on this basis without an opportunity for a hearing. The secretary shall promulgate regulations which implement this section. For the purposes of this section, if a corporate permittee has demonstrated a pattern of willful violations, then any subsequent application for a permit by that corporation, or any person who controls or has controlled that corporation, shall be denied.
- (4) In the exercise of the secretary's enforcement powers and authority under this chapter, the secretary, or an authorized representative of the cabinet, after inspection, shall immediately order the cessation of the condition or operation when he determines that the condition or operation creates an imminent danger to the health or safety of the public or that the condition or operation is causing or can reasonably be expected to cause significant imminent environmental harm in violation of this chapter or the regulations pursuant to this chapter, or any permit condition. For purposes of this subsection, "imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.
- (5) Each provision of this section shall be interpreted and applied consistently with due process of law.
- (6) The secretary, or authorized representatives of the cabinet, shall have the power to vacate, amend, modify, or terminate notices of noncompliance and cessation orders, pursuant to administrative regulations promulgated by the cabinet.

- (7) Service of any notice or order by electronic mail shall be effective upon delivery of the notice or the order to the recipient's inbox by electronic mail as electronically communicated to the cabinet by an electronic registered receipt.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 114, sec. 2, effective July 15, 2010. -- Amended 1992 Ky. Acts ch. 120, sec. 2, effective July 14, 1992; and ch. 429, sec. 17, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 210, sec. 6, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 294, sec. 3, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 283, sec. 6, effective April 2, 1982. -- Amended 1980 Ky. Acts ch. 114, sec. 99, effective July 15, 1980; ch. 62, sec. 14, effective March 21, 1980; and ch. 377, sec. 11, effective March 21, 1980. -- Amended 1978 Ky. Acts ch. 105, sec. 2, effective June 17, 1978 and ch. 330, sec. 20, effective May 3, 1978. -- Amended 1974 Ky. Acts ch. 69, sec. 6; and ch. 74, Art. III, sec. 13(7); ch. 315, sec. 75; and ch. 399, sec. 2. -- Amended 1972 (1st Extra. Sess.) Ky. Acts ch. 3, sec. 72. -- Amended 1966 Ky. Acts ch. 4, sec. 19. -- Amended 1964 Ky. Acts ch. 61, sec. 7. -- Amended 1962 Ky. Acts ch. 105, sec. 10. -- Created 1954 Ky. Acts ch. 8, sec. 13.