

CHAPTER 1043

MINING H.F. 2408

† AN ACT concerning mining by applying the criterion for the reclamation of mine sites, by redefining operator and mining operations, by amending the hearing procedures, by providing for administrative actions and assessments of penalties by the division of soil conservation for noncompliance, and establishing additional penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 208.1, Code 1995, is amended to read as follows:

208.1 POLICY.

It is the policy of this state to provide for the reclamation and conservation of land affected by surface the mining of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the people of this state.

Sec. 2. Section 208.2, Code 1995, is amended to read as follows:

208.2 DEFINITIONS.

When used in this chapter, unless the context otherwise requires:

1. "Administrator" means the ~~division~~ administrator of the division of soil conservation or a designee.
2. "Affected land" means the area of land from which overburden has been removed or upon which overburden has been deposited or both land which has otherwise been disturbed, changed, influenced, or altered in any way in the course of mining, including crushing areas processing and stockpile areas but not including roads.
3. "Committee" means the state soil conservation committee.
4. "Division" means the division of soil conservation within the department of agriculture and land stewardship.
5. ~~"Mine" means any underground or surface mine developed and operated for the purpose of extracting any ores or mineral solids except coal.~~ "Exploration" means the mining of limited amounts of any mineral to determine the location, quantity, or quality of the mineral deposit.
- 5A. "Highwall" means the unexcavated face of exposed overburden and mineral in a surface mine.
6. ~~"Mine site" or "mine site" means a site where surface mining is being conducted or has been conducted in the past and the operator anticipates further surface mining operations, or the surface operation related to an underground mine.~~
7. "Mineral" means gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal.
8. "Mining" means the excavation of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, for sale or for processing or consumption in the regular operation of a business and shall include surface mining and underground mining.
9. "Mining operation" means activities conducted by an operator on a mine site relative to the excavation of minerals and shall include disturbing overburden, excavation, and processing of minerals, stockpiling and removal of minerals from a site, and all reclamation activities conducted on a mine site.
7. 10. ~~"Operator" means any person, firm, partnership, or corporation, or political subdivision engaged in and controlling a mining operation but shall not include a political subdivision of the state of Iowa.~~
8. 11. "Overburden" means all of the earth and other materials which lie above natural

† Estimate of additional local revenue expenditures required by state mandate on file with the Secretary of State

mineral deposits of gypsum, clay, stone, sand, gravel or other minerals, and includes all earth and other materials disturbed from their natural state in the process of surface mining.

9. ~~“Peak” means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.~~

10. ~~“Pit” means a tract of land from which overburden has been or is being removed for the purpose of surface mining.~~

12. “Pit floor” or “quarry floor” means the lower limit of a surface excavation to extract minerals.

13. “Political subdivision” means any county, district, city, or other public agency within the state of Iowa.

14. “Reclamation” means the process of restoring disturbed lands to the premined uses of the lands or other productive uses.

11. ~~“Ridge” means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.~~

12. 15. “Surface mining” means the mining of gypsum, clay, stone, sand, gravel or other ores or mineral solids for sale or for processing or consumption in the regular operation of a business by removing the overburden lying above the natural deposits and mining excavating directly from the natural deposits exposed, or by mining excavating directly from deposits lying exposed in their natural state and shall include dredge operations conducted in or on natural waterways or artificially created waterways within the state. Removal of overburden and mining of limited amounts of any ores or mineral solids shall not be considered surface mining when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of the natural deposit, if the ores or mineral solids removed during exploratory excavation or mining are not sold, processed for sale, or consumed in the regular operation of a business.

13. 16. “Topsoil” means the natural medium located at the land surface with favorable characteristics for the growth of vegetation.

17. “Underground mining” means mining by digging or constructing access tunnels, adits, ramps, or shafts and excavating directly from the natural mineral deposits exposed.

Sec. 3. Section 208.7, Code 1995, is amended to read as follows:

208.7 MINING LICENSE.

~~No person, firm, partnership, or corporation~~ An operator shall not engage in surface mining or operation of an underground mine or mines, as defined by section 208.2, without first obtaining a license from the division. Licenses shall be issued upon approval by the division following application by the operator. Applications shall be submitted on a form provided by the division and shall be accompanied by a fee of fifty dollars. Each applicant shall be required to furnish on the form information necessary to identify the applicant. Licenses shall expire on December 31 of each year and shall be renewed by the division upon application submitted within thirty days prior to the expiration date and accompanied by a fee of ten dollars. However, a political subdivision shall not be required to pay a license application or renewal fee.

Sec. 4. Section 208.8, Code 1995, is amended to read as follows:

208.8 SUSPENSION OR REVOCATION OF LICENSE—~~REFUSAL TO RENEW.~~

1. ~~The division may, with approval of the committee, commence proceedings to suspend, revoke, or refuse to renew a license of any licensee for repeated or willful violation of any of the provisions of this chapter, initiate an action to suspend, revoke, or refuse to issue a mining license.~~

2. The division shall, by certified mail or personal service, serve on the licensee operator notice in writing of the charges and grounds upon which the license is to be suspended, revoked, or will not be renewed issued. The notice shall include the time and the place at which a hearing shall be held before the committee, a subcommittee appointed by the

committee, or the committee's designee, to determine whether to suspend, revoke, or refuse to renew issue the license. The hearing shall be not less than fifteen nor more than thirty days after the mailing or service of the notice.

3. An operator whose license the division proposes to suspend, revoke, or refuse to issue has the right to counsel and may produce witnesses and present statements, documents, and other information in the operator's behalf at the hearing.

4. If after full investigation and hearing the operator is found to have willfully or repeatedly violated any of the provisions of this chapter, the committee or subcommittee may affirm or modify the proposed suspension, revocation, or refusal to issue the license.

5. When the committee or subcommittee finds that a license should be suspended or revoked or should not be issued, the division shall so notify the operator in writing by certified mail or by personal service.

a. The suspension or revocation of a license shall become effective thirty days after notice to the operator.

b. If the license or renewal fee has been paid and the committee or subcommittee finds that the license should not be issued, then the license shall expire thirty days after notice to the operator.

6. An action by the committee or subcommittee to affirm or modify the proposed suspension, revocation, or refusal to issue a license constitutes a final agency action for purposes of judicial review pursuant to section 208.11 and chapter 17A.

Sec. 5. Section 208.9, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

208.9 REGISTERING MINE SITE.

1. At least seven days before beginning mining or removal of overburden at a mine site not previously registered, an operator engaging, or preparing to engage, in mining in this state shall register the mine site with the division. Application for registration shall be made upon a form provided by the division and shall be accompanied by a bond or security as provided by section 208.14. A registration renewal shall be filed annually. Application for renewal of registration shall be on a form provided by the division. The registration and registration cancellation fees shall be established by the division in an amount not to exceed the cost of administering the provisions of this chapter. The application shall include a description of the tract or tracts of land where the site is located and the estimated number of acres at the site to be affected by the mine. The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands. The application shall include a statement explaining the authority of the applicant's legal right to operate a mine on the land.

2. A mine site registered pursuant to this chapter shall have a clearly visible sign which identifies the mining operation. Failure to post and maintain a sign as required by this subsection, within thirty days after notice from the division, invalidates the registration.

3. The division shall automatically invalidate all registrations of an operator who fails to renew the operator's mining license within a time period set by the division, who has been denied license renewal by the committee or subcommittee, or whose license has been suspended or revoked by the committee or subcommittee.

Sec. 6. Section 208.10, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

208.10 VIOLATION – ENFORCEMENT.

1. The administrator may issue an order directing the operator to desist in an activity or practice which constitutes a violation of any provision of this chapter or any rules adopted by the division, or to take such corrective action as may be necessary to ensure that the violation will cease. If corrective measures sought by the division are not commenced within the time period designated in the order, the division may refer the violation to the attorney general for further action.

2. The operator may contest an order issued under this section through contested case proceedings pursuant to chapter 17A by filing with the administrator a notice of appeal within thirty days of receipt of the order for review by the division.

3. At the request of the division, the attorney general shall institute any legal proceedings, including an action for a civil penalty, injunction, or temporary injunction, necessary to enforce the provisions of this chapter or to obtain compliance with this chapter. Action by the attorney general may be taken in lieu of or in conjunction with any administrative action by the division.

4. Falsification of information required to be submitted under this chapter is a violation of this chapter.

Sec. 7. NEW SECTION. 208.10A PENALTIES.

1. Any person who violates an order issued pursuant to section 208.10 shall be subject to an administrative penalty determined by the division not to exceed five thousand dollars per violation.

a. The division shall establish, by rule, a schedule or range of administrative penalties. The schedule shall provide procedures and criteria for the assessment of these penalties.

b. Administrative penalties may be assessed in lieu of or in conjunction with any action initiated by the attorney general on behalf of the division.

c. All penalties shall be paid within thirty days of the date that the order assessing the penalty becomes final. An operator who fails to pay an administrative penalty assessed by a final order of the division shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

d. The attorney general shall, at the request of the division, institute proceedings to recover all penalties assessed.

2. If any person violates a provision of this chapter, or any rule or order adopted by the division pursuant to this chapter, the division may notify the attorney general who shall institute a civil action in district court for injunctive relief and for the assessment of a civil penalty not to exceed ten thousand dollars per violation.

3. Penalties, bond reversions, and bond forfeitures collected under the provisions of this chapter or any rule adopted by the division pursuant to this chapter shall be deposited in an interest bearing account and may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

Sec. 8. Section 208.15, Code 1995, is amended to read as follows:

208.15 AMENDMENT OR CANCELLATION.

An operator may at any time apply for amendment or cancellation of registration of any site. The application for amendment or cancellation of registration shall be submitted by the operator on a form provided by the division and shall identify as required under section ~~208.13~~ 208.9 the tract or tracts of land to be added to or removed from registration. If the application is for an increase in the area of a registered site, the application shall be processed in the same manner as an application for original registration. If the application is to cancel registration of any or all of the unmined part of a site, the division shall after ascertaining that no overburden has been disturbed or deposited on the land order release of the bond or the security posted on the land being removed from registration and cancel or amend the operator's written authorization to conduct ~~surface~~ mining on the site. Fees for amendment or cancellation of registration shall be determined as provided in section ~~208.13~~ 208.9. No land where overburden has been disturbed or deposited shall be removed from registration or released from bond or security under this section.

Sec. 9. Section 208.16, Code 1995, is amended to read as follows:

208.16 TRANSFER TO NEW OPERATOR.

~~1. If control of an active a mine site or the right to conduct any future mining at an inactive site registered pursuant to section 208.9 is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, the new operator shall within fifteen thirty days apply for registration of the site in the new operator's name. The application shall be made and processed as provided under sections 208.13 208.9 and 208.14. The former operator's bond or security shall not be released until the new operator's bond or security has been accepted by the division.~~

~~2. The division may establish procedures for transferring the responsibility for reclamation of a mine site to a state agency or political subdivision which intends to use the site for other purposes. The division, with agreement from the receiving agency or subdivision to complete adequate reclamation, may approve the transfer of responsibility, release the bond or security, and terminate or amend the operator's authorization to conduct surface mining on the site.~~

Sec. 10. Section 208.17, Code 1995, is amended to read as follows:

208.17 RECLAMATION REQUIREMENTS.

1. An operator authorized under this chapter to operate a mine, after completion of mining operations and within the time specified in section 208.19, shall:

a. Grade affected lands ~~except for impoundments, pit floors, and highwalls~~, to slopes having a maximum of one foot vertical rise for each four feet of horizontal distance. Where the original topography of the affected land was steeper than one foot of vertical rise for each four feet of horizontal distance, the affected lands may be graded to blend with the surrounding terrain. However, water impoundments, pit or quarry floors, and highwalls are not subject to the requirements of this paragraph.

b. ~~Provide for the vegetation of the~~ Stabilize and revegetate affected lands, except for ~~water impoundments, and pit or quarry floors, and highwalls~~, as approved by the ~~department division~~ before the release of the bond as provided in section 208.19.

c. Properly dispose of all mine-related debris, junk, waste materials, old equipment, and other materials of similar or like nature, within the registration boundaries of the site.

2. Notwithstanding subsection 1, overburden piles where deposition has not occurred for a period of twelve months shall be stabilized and revegetated.

~~3. Crushing areas and stockpile areas in place on July 1, 1985 are not subject to this section unless those areas continue to function as a part of the mine site after July 1, 1988.~~

4. ~~3.~~ Topsoil that is a part of overburden shall not be destroyed or buried in the process of mining.

~~5. 4.~~ The ~~department, with concurrence of the advisory board,~~ division may grant a variance from the requirements of subsections 1 and 2.

~~6. 5.~~ A bond or security posted under this chapter to assure reclamation of affected lands shall not be released until all of the reclamation work required by this section has been performed in accordance with this chapter and ~~departmental~~ division rules, except when a replacement bond or security is posted by a new operator or responsibility is transferred under section 208.16.

Sec. 11. Section 208.18, Code 1995, is amended to read as follows:

208.18 PERIODIC REPORTS.

An operator shall file with the division a periodic report for each mine site under registration.

1. The report shall make reference to the most recent registration of the mine site and shall show:

~~1. a.~~ The location and extent of all surface land area on the mine site affected by mining during the period covered by the report.

~~2. b.~~ The extent to which removal of mineral products from all or any part of the affected lands has been completed.

2. The report shall be filed not later than twelve months after original registration of

the site and prior to the expiration of each subsequent twelve-month period. A report shall also be filed within thirty days after completion of all surface mining operations at the site regardless of the date of the last preceding report. Forms for the filing of periodic reports required by this section shall be provided by the division.

Sec. 12. Section 208.19, unnumbered paragraph 3, Code 1995, is amended to read as follows:

An operator, upon completion of any reclamation work required by section 208.17, shall apply to the division in writing for approval of the work. The division shall within a reasonable time determined by divisional rule inspect the completed reclamation work. Upon determination by the division that the operator has satisfactorily completed all required reclamation work on the land included in the application, the division shall release the bond or security on the reclaimed land, shall remove the land from registration, and shall terminate or amend as necessary the operator's authorization to conduct surface mining on the site.

Sec. 13. Section 208.20, Code 1995, is amended to read as follows:

208.20 EXTENSION OF TIME.

The time for completion of reclamation work may be extended upon presentation by the operator of evidence satisfactory to the division that reclamation of affected land cannot be completed within the time specified by section 208.19 ~~without unreasonably impeding removal of mineral products from other parts of an active site or future removal of mineral products from an initiative site.~~

Sec. 14. Section 208.21, Code 1995, is amended to read as follows:

208.21 POLITICAL SUBDIVISION ENGAGED IN MINING.

Any political subdivision of the state of Iowa which engages or intends to engage in surface mining shall meet all requirements of ~~sections 208.13 to 208.20~~ this chapter except the subdivision shall not be required to post bond or security on registered land and shall not be required to pay licensing fees. ~~When a political subdivision engaging in surface mining violates any provision of this chapter or any rule adopted by the division pursuant to this chapter, the division shall notify the chief administrative officer or governing body of the subdivision. If after a reasonable time determined by the division, the subdivision has not commenced corrective measures approved by the division, the violation shall be referred to the committee. The chief administrative officer or governing body of the subdivision shall be notified in writing of the referral.~~

Sec. 15. Section 208.23, Code 1995, is amended to read as follows:

208.23 FORM OF BOND.

1. A bond filed with the division by an operator pursuant to this chapter shall be in a form prescribed by the division, payable to the state of Iowa, and conditioned upon faithful performance by the operator of all requirements of this chapter and all rules adopted by the division pursuant to this chapter. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Iowa as surety. In lieu of a bond, the operator may deposit cash; or certificates of deposit ~~or government securities~~ with the division on the same conditions as prescribed by this section for filing of bonds. The amount of the bond ~~or other security~~ required to be filed with an application for registration of a surface mining site, or to increase the area of a site previously registered, shall be equal to the estimated cost of reclaiming the site as required under section 208.17 and estimated by the division.

2. The estimated cost of reclamation of each individual site shall be determined by the division on the basis of the requirements of this chapter and other relevant factors including, but not limited to, topography of the site, mining methods being employed, depth and composition of overburden, and depth of the mineral deposit being mined, and cost of administration. The division may require an ~~applicant for registration or amendment of~~

~~registration of a site operator to furnish information necessary to estimate the cost of reclaiming the site. The penalty amount of the bond or the amount of cash or securities on deposit may be increased or reduced from time to time as determined necessary and appropriate by the division or in accordance with section 208.15.~~

Sec. 16. Section 208.24, Code 1995, is amended to read as follows:

208.24 SINGLE BOND FOR MULTIPLE SITES.

An operator who registers with the division two or more ~~surface mining mine~~ sites may elect, at the time the second or a subsequent site is registered, to post a single bond in lieu of separate bonds on each site. A single bond so posted shall be in an amount equal to the estimated cost of reclaiming all sites the operator has registered, determined as provided in section 208.23. The penalty of a single bond on two or more ~~surface mining mine~~ sites may be increased or decreased from time to time in accordance with sections 208.14, 208.15, and 208.19. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the division.

Sec. 17. Section 208.25, Code 1995, is amended to read as follows:

208.25 CANCELLATION OF BOND.

No bond filed with the division by an operator pursuant to this chapter may be canceled by the surety without at least ninety days' notice to the division. If the license to do business in Iowa of any surety of a bond filed with the division is suspended or revoked, the operator, within thirty days after receiving notice thereof from the division, shall substitute for the surety a corporate surety licensed to do business in Iowa. Upon failure of the operator to make substitution of surety as herein provided, the division shall have the right to suspend the operator's authorization to conduct ~~surface~~ mining on the site covered by the bond until substitution has been made. The commissioner of insurance shall notify the division whenever the license of any surety to do business in Iowa is suspended or revoked.

Sec. 18. Section 208.26, Code 1995, is amended to read as follows:

208.26 RULES - INSPECTION OF SITE.

The division may adopt rules to implement the provisions of this chapter. The administrator or the administrator's designee may enter at all times upon ~~any lands on which any operator is authorized to operate a mine any mine site or suspected mine site~~ for the purpose of determining whether the operator is or has been complying with the provisions of this chapter. ~~The division shall give written notice to any operator who violates any of the provisions of this chapter or any rules adopted by the division pursuant to this chapter. If corrective measures approved by the division are not commenced within ninety days, the violation shall be referred to the committee. The operator shall be notified in writing of the referral.~~ All operators shall ~~co-operate~~ cooperate with the division in seeking methods of operation which will cause minimum disruption to the land and property adjoining a mining operation.

Sec. 19. Section 208.28, Code 1995, is amended to read as follows:

208.28 FORFEITURE OF BOND - LICENSURE RESTRICTIONS.

1. The attorney general, upon request of the ~~committee~~ division, shall institute proceedings for forfeiture of the bond posted by an operator to guarantee reclamation of a site where the operator is in violation of any of the provisions of this chapter or any rule adopted by the division pursuant to this chapter. ~~Forfeiture of the operator's bond shall fully satisfy all obligations of the operator to reclaim affected land covered by the bond.~~ The division shall have the power to reclaim as required by section 208.17 any ~~surface~~ mined land with respect to which a bond has been forfeited, using the proceeds of the forfeiture to pay for the necessary reclamation work and associated administrative costs.

2. If the proceeds from bond forfeiture proceedings are insufficient to fully satisfy the estimated cost of reclaiming disturbed lands as required under section 208.17 and division rules, the operator shall be liable for remaining costs. The division may complete, or authorize completion of, the necessary reclamation and may authorize the attorney general to bring a civil action to recover from the operator all actual or estimated costs of reclamation in excess of the amount forfeited or require the operator to complete reclamation.

3. If the amount of bond forfeited exceeds the amount necessary to complete reclamation, the unused funds shall be returned to the operator or the surety, as appropriate.

Sec. 20. REPEALS. Sections 208.13, 208.22, 208.27, 208.29, and 208.30, Code 1995, are repealed.

Sec. 21. IMPLEMENTATION. Section 25B.2, subsection 3, shall not apply to this Act.

Approved April 2, 1996

CHAPTER 1044

REORGANIZATION OF TELEPHONE COMPANIES AS COOPERATIVE ASSOCIATIONS

H.F. 2036

AN ACT relating to certain telephone companies and permitting their reorganization as cooperative associations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 499.5, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A telephone company organized as a corporation under chapter 491 and qualifying pursuant to an internal revenue service letter ruling under I.R.C. § 501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to an association under this chapter may reorganize as an association under this chapter upon the affirmative vote of two-thirds of the votes cast by the shares entitled to vote in an election at a meeting at which a majority of all shares entitled to vote cast a vote.

Approved April 2, 1996