

Effective 5/12/2020

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 -- Restricted account.

- (1) At a hearing or investigation conducted by the board, the board may:
 - (a) summon witnesses;
 - (b) administer oaths; and
 - (c) require the production of records, books, and documents for examination.
- (2)
 - (a) If a 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 a district court in the state for an order compelling that person to:
 - (i) comply with the subpoena;
 - (ii) attend before the board;
 - (iii) produce the subpoenaed records, books, and documents for examination; and
 - (iv) give the person's testimony.
 - (b) The court may punish the person for contempt as if the person disobeyed a subpoena issued by the court, or if the person refused to testify in a court.
- (3)
 - (a) Whenever it appears that a person is violating this chapter or a rule or order made under the authority of this chapter, the board may issue an order requiring compliance within a period not to exceed 45 days.
 - (b) The board may bring suit in the name of the state against a 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) Subject to the requirements of this Subsection (4), if the board or division determines, after an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, that a person has violated this chapter, or a permit, rule, or order made under this chapter, the board or division may impose an administrative penalty on the person not to exceed \$5,000 per day for each day of violation.
 - (b) If the board determines that the violation is willful, the board may impose an administrative penalty on that person not to exceed \$10,000 for each day of violation.
 - (c) The board shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish a standardized violation schedule to set the violations and the associated administrative penalty for each violation.
 - (d) A single violation shall result in a single administrative penalty, that may be imposed on a daily basis for each day that the violation remains unresolved following the assessment of the administrative penalty or completion of the appeal.
 - (e) Before initiation of an adjudicative proceeding or assessing an administrative penalty, and except for circumstances provided in Subsection (4)(b), the division shall provide a notice of violation to the owner and operator in the form and manner set forth by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. The rule made under this Subsection (4)(e) shall, at a minimum, require the notice to set forth the actions necessary to cure the violation and a reasonable period of time to cure the violation.

- (f) Should an owner or operator fail to cure the violation as set out in the notice of violation under Subsection (4)(e), the division may initiate an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (g) Administrative penalties assessed by the division or the board may not exceed \$200,000 per violation per person.
 - (h) An administrative penalty assessed by the division may be appealed to the board within 30 days of the assessment.
 - (i) If a violation remains unabated and the maximum penalty amount has accrued, the division may request an emergency order from the board requiring the operator or person to suspend operations of the well or facility in violation. Operations may only resume upon abatement of the 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 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) A person may not 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) This chapter, a suit by or against the board, and a violation charged or asserted against a person under this chapter, or a rule or order issued under the authority of this chapter, may not impair, abridge, or delay a cause of action for damages that a person may have or assert against any person violating this chapter, or a rule or order issued under the authority of this chapter.
 - (b) A person damaged by a violation may sue for and recover whatever damages that the person otherwise may be entitled to receive.
- (8) After an administrative penalty is assessed under this chapter, the division may collect that administrative penalty as if the administrative penalty were a judgment issued by a court of law so long as the penalized person was provided with notice of the violation, a reasonable opportunity to cure, and an opportunity for a hearing under Title 63G, Chapter 4, Administrative Procedures Act, and the administrative and appellate remedies are exhausted.
- (9)
- (a) There is created within the General Fund a restricted account known as the "Oil and Gas Administrative Penalties Account."
 - (b) The Oil and Gas Administrative Penalties Account shall consist of:
 - (i) administrative penalties collected by the board or division under this chapter; and
 - (ii) interest earned on the Oil and Gas Administrative Penalties Account.
 - (c) The Oil and Gas Administrative Penalties Account shall earn interest.
 - (d) Subject to appropriation by the Legislature, the division may use money in the Oil and Gas Administrative Penalties Account to offset:
 - (i) risks to the public health, safety, or welfare caused by oil and gas operations for impacts and activities covered by bonding; or
 - (ii) other direct impacts to the general public from oil and gas development as identified by the board and the executive director of the Department of Natural Resources at a public hearing

that are not otherwise addressed through performance bonds allowed by Subsection 40-6-5(2)(f).

- (e) In accordance with Section 63J-1-602.1, appropriations from the Oil and Gas Administrative Penalty Account are nonlapsing.

Amended by Chapter 375, 2020 General Session