

49-426. Civil action to compel compliance with act; limitations; award of costs of litigation; rights to seek other relief not restricted; action for damages for injuries. (a) Except as provided in subsection (b), any person having an interest which is or may be adversely affected may commence a civil action on such person's behalf to compel compliance with this act:

(1) Against the state or any subdivision thereof which is alleged to be in violation of the provisions of this act or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this title; or

(2) against the secretary where there is alleged a failure of the secretary to perform any act or duty under this act which is not discretionary with the secretary. Any actions hereunder shall be brought in any judicial district where land involved in surface coal mining operations complained of lies.

(b) No action may be commenced:

(1) Under paragraph (1) of subsection (a):

(A) Prior to 60 days after the plaintiff has given notice in writing of the violation (i) to the secretary and (ii) to any alleged violator; or

(B) if the secretary has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this act, or any rule, regulation, order, or permit issued pursuant to this act, but in any such action any person may intervene as a matter of right; or

(2) under paragraph (2) of subsection (a) prior to 60 days after the plaintiff has given notice in writing of such action to the secretary, in such manner as the secretary prescribes by rule and regulation, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) In such action under this section, the secretary, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of litigation, including attorney and expert witness fees, to any party, wherever the court determines such award is appropriate. The court, if a temporary restraining order or preliminary injunction is sought, may require the filing of a bond or equivalent security.

(e) Nothing in this section shall restrict any right which any person, or class of persons, may have under any statute or common law to seek enforcement of any of the provisions of this act and the regulations thereunder, or to seek any other relief, including relief against the secretary.

(f) Any person who is injured or whose property is injured through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this act may bring an action for damages, including reasonable attorney and expert witness fees, in any judicial district where land involved in surface coal mining operations complained of lies. Nothing in this subsection shall affect the rights established by or limits imposed under the workers' compensation laws of this state.

History: L. 1979, ch. 169, § 12; L. 1988, ch. 192, § 27; July 1.