

## CHAPTER 267

(HB 599)

AN ACT relating to mining reclamation.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

- (1) If a permittee or operator has been issued a notice or order directing abatement of a violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator for the limited purpose of abating that violation.*
- (2) If a violation other than one described in subsection (1) cannot be abated because the permittee or operator responsible for abatement of the violation has been denied access to the land necessary to allow abatement of the violation, the cabinet shall terminate the notice of noncompliance or cessation order issued for the violation, if the following conditions are met:*

  - (a) Prior to terminating a notice of noncompliance or cessation order under this subsection, and within thirty (30) days of a request by a permittee or operator to terminate a violation based on a lack of access, the cabinet shall verify the denial of access and advise the surface owners of record and the legal occupants of the affected land of the consequences of refusing to allow access to the property for the purpose of enabling abatement of the violation; and*
  - (b) The cabinet shall explain the consequences by certified mail, return receipt requested, and shall make a good faith effort to notify all owners of interest and legal occupants verbally, that:*

    - 1. Refusal to allow access to the property will result in termination of the violation as uncorrectable;*
    - 2. If there is damage that occurs to public or private property due to the uncorrected violation condition on the property, that the property owner may also be responsible under law for any property damage to private or public property that may result from the unreclaimed condition; and*
    - 3. While the landowner may seek damages or injunctive relief in an action against the permittee or operator, the refusal to grant access in order to allow abatement of the violation shall result in the state terminating the requirement that the permittee or operator undertake work necessary for abatement of the violation, and that while penalties may be assessed, the performance bond shall not be forfeited on the basis of the violation.*
- (3) The cabinet shall not terminate any notice of noncompliance or cessation order under this section if the cabinet determines that the denial of access necessary to abate the violation has been procured through collusion between the permittee or operator and the landowner or legal occupant of the affected land who is refusing to allow the necessary access. "Collusion," for the purpose of this section, includes any agreement,*

*understanding, or contract by which the landowner refuses access to the property in return for any consideration, whether involving money or otherwise. Any act of collusion shall subject the permittee or operator to penalties under this chapter for willful and knowing refusal to correct the violation.*

- (4) No noncompliance or cessation order may be terminated under this section where there is any common ownership or control between the permittee or operator and the landowner or legal occupant. No noncompliance or cessation order may be terminated under this section where there is any other legal relationship between the permittee or operator and the landowner or legal occupant, except where a court of competent jurisdiction has determined that the legal relationship does not provide for a right of access.*
- (5) Where a violation may impact public or private property other than land for which access has been denied, the cabinet shall direct abatement measures to be taken by the permittee or operator to prevent damage to those lands for which access has not been denied.*
- (6) Termination of a notice of noncompliance or cessation order under this section shall not affect the assessment of a civil penalty for the violation. Nothing in this section shall affect any person's right for damages or injunctive relief. Approved March 31, 2000*

