

350.250 Complaints of violation -- Mandamus -- Civil action by person adversely affected by violation -- Intervention by cabinet.

- (1) Any person with an interest which is or may be adversely affected having knowledge that any of the provisions of this chapter or regulations adopted thereunder are not being enforced by any public officer or employee, whose duty it is to enforce such provisions of this chapter and regulations thereunder, may bring such failure to enforce the law to the attention of such public officer or employee. To provide against unreasonable and irresponsible demands being made, all such demands to enforce the law must be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law. If such public officer or employee neglects or refuses for any unreasonable time but in no event longer than sixty (60) days after demand to enforce such provision, any such person shall have the right to bring an action of mandamus in the Circuit Court of the county in which the operation which relates to the alleged lack of enforcement is being conducted; provided, that any action pursuant to this section may be brought immediately after a demand for enforcement when the violation or order complained of constitutes an imminent threat to the health or safety of the complaining person or would immediately affect a legal interest of the complaining person. The court, if satisfied that any provision of this chapter or regulation thereunder is not being enforced, shall make an appropriate order compelling the public officer or employee, whose duty it is to enforce such provision, to perform his duties, and upon failure to do so such public officer or employee shall be held in contempt of court and shall be subject to the penalties provided by the laws of the Commonwealth in such cases.
- (2) The court having jurisdiction of a complaint made pursuant to subsection (1) of this section may in its final order award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.
- (3) Any person who is or may be adversely affected by the violation by any person of any rule, regulation, order or permit issued pursuant to this chapter may bring a civil action for injunctive relief or for damages or both (including reasonable attorney and expert witness fees) in the Circuit Court of the county in which the surface coal mining operation complained of is located. Nothing in this subsection shall be construed to be a waiver of sovereign immunity by the Commonwealth.
- (4) In such action under this section, the cabinet, if not a party, may intervene as a matter of right.

Effective: March 28, 1984

History: Amended 1984 Ky. Acts ch. 145, sec. 4, effective March 28, 1984. -- Amended 1980 Ky. Acts ch. 62, sec. 29. -- Amended 1978 Ky. Acts ch. 332, sec. 10, effective June 17, 1978. -- Created 1966 Ky. Acts ch. 4, sec. 23.