

27—40.72(207) Inspections and monitoring.**40.72(1) Requests for inspections.**

a. A person may request an inspection under Iowa Code section 207.13 by furnishing to an authorized representative of the administrator a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation exists. The statement shall set forth a phone number and address where the person can be contacted.

b. The identity of any person supplying information to the division relating to a possible violation or imminent danger or harm shall remain confidential with the division, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Iowa Code section 22.7, subsection 18.

c. If an inspection is conducted as a result of information provided to the division by a person as described in paragraph “a” of this subrule, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the administrator during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information but only if in the presence of and under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

d. Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the person’s written statement, the division shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person’s right, if any, to informal review of the action or inaction of the division under subrule 40.72(3).

e. The division shall give copies of all materials in paragraph “d,” subparagraphs (1) and (2), of this subrule, within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of the person’s identity is permitted under paragraph “b” of this subrule.

40.72(2) Review of adequacy and completeness of inspections. Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the administrator or designee in writing of any alleged failure on the part of the division to make adequate and complete or periodic State inspections. The notification shall include sufficient information to create a reasonable belief that these rules are not being complied with and to demonstrate that the person is or may be adversely affected. The administrator or designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The administrator or designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

40.72(3) Review of decision not to inspect or enforce.

a. Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the administrator or designee to review informally an authorized representative’s decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under subrule 40.72(1). The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

b. The administrator or designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under Iowa Code section 22.7, subsection 18.

c. Informal review shall not affect any right to formal review under Iowa Code section 207.14 or to a citizen's suit under Iowa Code section 207.17.

d. Any determination made under paragraph "*b*" of this subrule shall constitute a decision of the division within the meaning of Iowa Code section 207.14 and shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.