

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1845
CIVIL PENALTIES

Section

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AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9365; amended at 11 Ill. Reg. 8014, effective July 1, 1987; amended at 17 Ill. Reg. 10926, effective July 1, 1993; amended at 20 Ill. Reg. 1946, effective January 19, 1996; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 22 Ill. Reg. 7712.

Section 1845.1 Scope

This Part covers the assessment of civil penalties under Section 8.04 of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1985, ch. 96 1/2, pars. 7901.01 et seq.) (the State Act) with respect to cessation orders and notices of violation issued pursuant to 62 Ill. Adm. Code 1843.

(Source: Amended at 11 Ill. Reg. 8014, effective July 1, 1987)

Section 1845.2 Objective

Civil penalties are assessed under Section 8.04 of the State Act and this Part for the purpose of aiding in the administration of the State Act.

(Source: Amended at 11 Ill. Reg. 8014, effective July 1, 1987)

Section 1845.11 How Assessments are Made

The Illinois Department of Natural Resources (Department) shall review each notice of violation and cessation order in accordance with the provisions set forth in Sections 1845.12 through 1845.17 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of penalty assessment.

(Source: Amended at 11 Ill. Reg. 8014, effective July 1, 1987)

Section 1845.12 When Penalty Will be Assessed

- a) The Department shall assess a penalty for each cessation order.
- b) The Department shall assess a penalty for a notice of violation if an assessment of one thousand, one hundred dollars (\$1,100.00) or more is derived in accordance with Section 1845.13.
- c) Except as provided in subsection (d) below, a penalty shall not be assessed for a notice of violation if an assessment of less than \$1,100 is derived in accordance with Section 1845.13.
- d) If the assessment for a notice of violation is below \$1,100, the Department shall take into account the factors set forth in Section 1845.13 in determining whether to assess the penalty. If it is the permittee's second or more related violation within a twelve (12) month period, a penalty shall be assessed.

(Source: Amended at 20 Ill. Reg. 1946, effective January 19, 1996)

Section 1845.13 Factors to be Considered in Assessing Civil Penalties

- a) The Department shall take into account the factors contained in subsection (b) to determine the amount of the penalty, and except violations cited in a cessation order issued under 62 Ill. Adm. Code 1843, whether a penalty should be assessed as provided in Section 1845.12(b).
- b) The factors to be considered are:
 - 1) History of previous violations. The Department shall assign up to \$1,000 based on the permittee's history of previous violations. \$20 shall be assigned for each past violation contained in a notice of violation. \$100 shall be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning dollar amounts,

shall be determined with respect to a particular coal exploration or surface coal mining operation. Amounts shall be assigned as follows:

- A) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;
 - B) No violation for which the notice or order has been vacated shall be counted; and
 - C) Each violation shall be counted without regard to whether it led to a civil penalty assessment.
- 2) Seriousness. The Department shall assign up to \$1,500 based on the seriousness of the violation, as follows:

- A) Probability of occurrence. The Department shall assign up to (\$750) based on the probability of the occurrence of the event which a violated standard is designed to prevent. The amounts shall be assessed according to the following schedule:

Probability of Occurrence		
None or Insignificant	\$ 0.00 to	100.00
Unlikely	100.00 to	200.00
Likely	200.00 to	300.00
Occurred	300.00 to	750.00

- B) Extent of potential or actual damage. The Department shall assign up to (\$750), based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:
 - i) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Department shall assign from zero dollars (\$0) to \$300, depending on the duration and extent of the damage or impact.
 - ii) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Department shall assign

from \$300 to \$750, depending on the duration and extent of the damage or impact.

C) Alternative. In the case of a violation of an administrative requirement, such as a requirement to keep records, the Department shall, in lieu of subsection (b)(2)(A) and (B) above, assign up to \$1,000 as follows:

- i) First violation of an administrative requirement within twelve (12) month period: zero dollars (\$0) to \$250.
- ii) Second violation of same or related administrative requirement within twelve (12) month period: zero dollars (\$0) to \$500.
- iii) Third violation of same or related administrative requirement within (12) month period: zero dollars (\$0) to \$1,000.

3) Negligence:

A) The Department shall assign up to (\$2,500) based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. The sums shall be assessed as follows:

- i) A violation which occurs through no negligence shall be assigned zero dollars (\$0) for negligence.
- ii) A violation which is caused by negligence shall be assigned up to \$500.
- iii) A violation which occurs through recklessness shall be assigned up to \$1,000.
- iv) A violation which occurs through knowing or intentional conduct shall be assigned up to \$2,500.

B) In determining the degree of negligence involved in a violation and the sum to be assigned, the following definitions apply:

- i) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

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- ii) Negligence means the failure of a permittee to prevent the occurrence of any violation of the permit or any requirement of the State Act or 62 Ill. Adm. Code 1700 - 1850 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the State Act due to indifference, lack of diligence, or lack of reasonable care.
 - iii) Recklessness means disregard of a known or obvious high risk.
 - iv) Knowing or intentional conduct occurs when the permittee is aware that he is, or will be, in violation of the regulations and fails to correct or avoid the situation.
- C) In calculating sums to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.
- 4) Good faith in attempting to achieve compliance.
- A) The Department shall reduce the proposed penalty amount by up to \$500 based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation.
 - B) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and the abatement was achieved before the time set for abatement.
 - C) No reduction of the proposed penalty amount will be given for normal compliance. Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.
 - D) Good faith credit will not be given if the violation is administrative in nature.

(Source: Amended at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1845.14 Determination of Amount of Penalty: Assessment of Separate Violations for Each Day (Repealed)

(Source: Repealed at 11 Ill. Reg. 8014, effective July 1, 1987)

Section 1845.15 Assessment of Separate Civil Penalties for Each Day

- a) The Department may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Department shall consider the factors listed in Section 1845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply.
- b) In addition to the civil penalty provided for in subsection (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to 62 Ill. Adm. Code 1843.12, a civil penalty of not less than seven hundred and fifty dollars (\$750) shall be assessed for each day during which such failure to abate continues. Exception: if the person to whom the notice or order was issued initiates review proceedings under Section 8.10 of the State Act with respect to the violation, in which the obligations to abate are suspended by the court, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.
- c) Such penalty for the failure to abate a violation shall not be assessed for more than thirty (30) days for each such violation. If the permittee has not abated the violation within the thirty (30) day period, the Department shall take appropriate action pursuant to Sections 8.04(e), 8.04(f), 8.06(d), or 8.08 of the State Act within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

(Source: Amended at 11 Ill. Reg. 8014, effective July 1, 1987)

Section 1845.17 Procedures for Assessment of Civil Penalties

- a) Within fifteen (15) days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Department. The Department shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.
- b) The Department shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative

means consistent with the rules governing service of a summons and complaint in the Illinois Circuit Courts, within thirty (30) days of issuance of the notice or order.

- 1) If the mail is tendered at the address of that person set forth in the sign required under 62 Ill. Adm. Code 1816.11 or 1817.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of subsection (b) shall be deemed to have been complied with upon such tender.
- 2) Failure by the Department to serve a proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:
 - A) Proves actual prejudice as a result of the delay; and
 - B) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of a request for hearing made pursuant to 62 Ill. Adm. Code 1847.5.
- c) Unless a hearing has been requested pursuant to 62 Ill. Adm. Code 1847.5, the Department shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Department shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in subsection (b), within thirty (30) days after the date the violation is abated.

(Source: Amended at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1845.18 Payment of Assessment; Hearing Request Deadline

- a) Within thirty (30) days after receipt of the proposed penalty assessment, the person for whom the proposed penalty was assessed shall either:
 - 1) pay the proposed penalty assessment to the Department; or
 - 2) if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed penalty assessment to the Department, for placement in escrow, together with a request for hearing pursuant to 62 Ill. Adm. Code 1847.5.

- b) If through administrative or judicial review, it is determined either that no violation occurred, or that the amount of the penalty should be reduced, the Department shall, within thirty (30) days of such determination, remit the appropriate amount to the person with interest at the rate of six percent (6%) per annum, or at the prevailing United States Department of the Treasury rate, whichever is greater. Failure to forward the money to the Department within thirty (30) days of receipt of the proposed penalty assessment shall result in a waiver of all legal rights to contest both the fact of the violation and the amount of the penalty.

(Source: Amended at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1845.19 Procedures for Hearing (Repealed)

(Source: Repealed at 17 Ill. Reg. 11095, effective July 1, 1993)

Section 1845.20 Final Assessment and Payment of Penalty

- a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 62 Ill. Adm. Code 1847.5, the proposed assessment shall become a final administrative decision of the Department and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.
- b) If the person to whom a notice of violation or cessation order is issued, or any other party, requests judicial review of a final order of the Department, the proposed penalty paid in accordance with Section 1845.18(a) shall continue to be held in escrow until completion of the review. Absent a request for judicial review, the escrowed funds shall be transferred to the Department in payment of the penalty.
- c) Civil penalties owed under Section 1845.20 may be recovered by the Department in a civil action.
- d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Department within fifteen (15) days after the order is mailed to such person.

(Source: Amended at 17 Ill. Reg. 11095, effective July 1, 1993)