

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1846
INDIVIDUAL CIVIL PENALTIES

Section

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Section 1846.1 Scope

This Part covers the Illinois Department of Natural Resources' (Department) assessment of individual civil penalties under Section 8.04(f) of the Surface Coal Mining Land Conservation and Reclamation Act (State Act) (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7908.04(f)).

Section 1846.5 Definitions

For purposes of this Part:

- a) Knowingly means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

- b) Violation, failure or refusal means -
 - 1) A violation of a condition of a permit issued pursuant to Section 2.01 of the State Act (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7902.01); or

 - 2) A failure or refusal to comply with any order issued under Section 8.06 of the State Act (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7908.06), or any order incorporated in a final decision issued by the Department under the State

Act, except an order incorporated in a decision issued under Section 8.06(b) of the State Act (Ill. Rev. Stat. 1987, ch 96 1/2, par. 7908.06(b)).

- c) Willfully means that an individual acted -
 - 1) Either intentionally, voluntarily, or consciously, and
 - 2) With intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

Section 1846.12 When an Individual Civil Penalty may be Assessed

- a) Except as provided in subsection (b), the Department may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.
- b) The Department shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Department to the corporate permittee for the violation, and the cessation order has remained unabated for thirty (30) days.

Section 1846.14 Amount of Individual Civil Penalty

- a) In determining the amount of an individual civil penalty assessed under Section 1846.12, the Department shall consider the criteria specified in Section 8.04(a) of the State Act including:
 - 1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;
 - 2) The seriousness of the violation, failure, or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and
 - 3) The determined good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.
- b) The penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the Department may assess a separate individual civil penalty for each day the violation, failure or refusal

continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Department, until abatement or compliance is achieved.

Section 1846.17 Procedure for assessment of individual civil penalty.

- a) Notice. The Department shall service on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.
- b) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final administrative decision of the Department 30 days after service upon the individual unless:
 - 1) The individual files, within 30 days after service of the notice of proposed individual civil penalty assessment, a petition for review with the Department's Springfield office, in accordance with 62 Ill. Adm. Code 1847.8; or
 - 2) The Department and the individual or responsible corporate permittee agree within 30 days after service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.
- c) Service. For purposes of this Section, service is sufficient if it would satisfy the requirements of 62 Ill. Adm. Code 1843.14.

(Source: Amended at 26 Ill. Reg. 4219, effective March 6, 2002)

Section 1846.18 Payment of Penalty

- a) No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final administrative decision in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the Department's decision.
- b) Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 62 Ill. Adm. Code 1847.8, the penalty shall be due upon issuance of a final administrative decision affirming, increasing or decreasing the proposed penalty.
- c) Abatement agreement. Where the Department and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance

with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final administrative decision from the Department stating that the penalty is due on the date of such final administrative decision, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

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