



Ohio Administrative Code Rule 1501:13-14-03 Civil penalties.

Effective: February 14, 2022

(A) The chief shall review each notice of violation and cessation order in accordance with the assessment procedures described in this rule to determine whether a civil penalty shall be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

(B) The chief shall assess a penalty for each cessation order. In all other instances, the chief shall consider the factors listed in paragraph (C) of this rule in determining whether to assess a penalty.

(C) In determining the amount of the penalty, the chief shall consider:

(1) The permittee's history of previous violations at the particular coal mining operation;

(2) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(3) Whether the permittee was negligent;

(a) "Negligence" means the failure of a permittee to prevent the occurrence of any violation of the conditions of the permit or Chapter 1513. of the Revised Code or rules adopted thereunder due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit or the law due to indifference, lack of diligence, or lack of reasonable care;

(b) A "greater degree of fault than negligence" means reckless, knowing, or intentional conduct; and

(4) The demonstrated good faith of the permittee to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation;

(a) "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 that abatement was achieved before the time set for abatement;

(b) "Normal compliance" means the person to whom the notice or order was issued abated the violation within the time given for abatement;

(c) If consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

(D) Assessment of separate violations for each day.

(1) The chief 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 chief shall consider the factors listed in paragraph (C) of this rule 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.

(2) In addition to the civil penalty provided for in paragraph (D)(1) of this rule and pursuant to section 1513.02 of the Revised Code, whenever a violation contained in a notice of violation, cessation order or other order has not been abated within the abatement period in the order, a civil penalty of not less than seven hundred fifty dollars shall be assessed for each day during which such failure continues, provided that such penalty for the failure to abate a violation shall not be assessed for more than thirty days for each such violation. If the permittee has not abated the violation within the thirty-day period, the chief shall within the next thirty days take appropriate action pursuant to section 1513.17 or 1513.40 of the Revised Code, or division (D)(3) of section 1513.02 of the Revised Code, or division (A) of section 1513.15 of the Revised Code, to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate. If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

(a) If the chairman of the reclamation commission determines, in a temporary relief proceeding held under section 1513.13 of the Revised Code, that the person to whom the notice or order was issued



will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the chairman of the reclamation commission issues a final order with respect to the violation in question; and

(b) If the person to whom the notice or order was issued initiates review proceedings under section 1513.14 of the Revised Code with respect to the violation in which the obligations to abate are stayed 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.

(E) Procedures for assessment of civil penalties.

(1) The chief shall, within thirty days of the issuance of the notice or order, serve a copy of the proposed assessment, by certified mail or other method able to track receipt of delivery, on the person to whom the notice of violation or order was issued at the address specified in the sign required under paragraph (B) of rule 1501:13-9-01 of the Administrative Code, or at any address at which the person is in fact located. Service shall be deemed complete when the certified mail service requirements of paragraph (D)(1)(b) of rule 1501:13-14-02 of the Administrative Code are met.

(2) The recipient of the proposed assessment shall be advised of the right to an informal assessment conference under this rule.

(3) Within fifteen days of service of a notice of violation or order, the person to whom it was issued may submit written information about the violation to the chief and to the inspector who issued the notice of violation or cessation order. The chief shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(F) Informal assessment conference.

(1) Within fifteen days from the date upon which a proposed assessment is served, the person to whom the proposed assessment was issued may submit a written request to the chief for an informal assessment conference to contest the amount of the penalty. The informal assessment conference shall constitute the public hearing required by division (E)(2) of section 1513.02 of the Revised Code. A person who does not submit a timely request for an informal assessment conference shall be



considered to have waived the opportunity for a conference. A timely request for an informal assessment conference under this rule shall toll the time permitted for appeal of the proposed assessment to the reclamation commission pursuant to section 1513.13 of the Revised Code.

(2) The chief shall appoint a conference officer to conduct the informal assessment conference. The conference officer shall be a person other than the inspector who issued the notice of violation upon which the penalty is based.

(3) The assessment conference shall not be governed by Chapter 119. of the Revised Code regarding the requirements for formal adjudicatory hearings.

(4) The assessment conference shall be held within sixty days after receipt of the written request required by paragraph (F)(1) of this rule. A failure by the chief to hold the assessment conference within the prescribed time limit shall not be grounds for rescission or reduction of all or a part of the proposed assessment unless the person against whom the proposed penalty is assessed makes a timely written objection to the delay and proves to the chief that actual prejudice results from the delay.

(5) The chief shall post notice of the date, time and place of the conference at least five days prior to the conference at the district office of the division of mineral resources management from which the underlying notice of violation was issued. Any person may attend and participate in the conference.

(6) Within thirty days after the conference, the conference officer shall issue a written notice of his or her action as a result of the conference, which notice shall be served on the persons who participated in the conference by certified mail in accordance with paragraph (D)(1)(b) of rule 1501:13-14-02 of the Administrative Code. The notice shall contain the decision of the conference officer to affirm, raise, lower or vacate the proposed assessment.

(7) The conference officer shall consider such information as is relevant to the assessment. The conference officer shall either:

(a) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer, chief and by the person assessed; or



(b) Affirm, raise, lower or vacate the penalty.

(8) The person served with the proposed assessment shall bear the burden of proving at the conference the existence or non-existence of any or all of the factors subject to consideration by the conference officer.

(9) The written notice of the conference officer's decision shall be accompanied by the worksheet if the proposed assessment has been raised or lowered. The reasons for the conference officer's action on the proposed assessment shall be fully documented in the appropriate file.

(10) If the conference officer increases or decreases the proposed assessment by more than twenty-five per cent and five hundred dollars, the notice of decision required by paragraph (F)(6) of this rule shall not be final unless approved by the chief or his or her designee, evidenced by the appropriate signature thereon.

(11) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved, or that the person assessed is not diligently working toward a good faith resolution of the issues.

(12) If full payment of the amount specified in the settlement agreement is not received within thirty days after execution of the agreement, the chief may enforce the agreement or rescind it and proceed as if there had never been a settlement agreement.

(G) Request for hearing. Any person having an interest that is or may be adversely affected by a notice of violation, order or decision of the chief or by any modification, vacation or termination of such a notice, order or decision, except a show cause order or an order which adopts a rule, may appeal by filing a notice of appeal with the reclamation commission pursuant to section 1513.13 of the Revised Code within thirty days from receipt of the proposed assessment.

(1) At the time this appeal is filed, the person shall forward the amount of the penalty to the secretary of the reclamation commission for placement in an escrow account. Failure to forward the money to the secretary of the reclamation commission within thirty days from receipt of the proposed



assessment shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(2) The reclamation commission shall hold all funds submitted under paragraph (G)(1) of this rule in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in paragraph (I) of this rule.

(H) If, upon appeal, the reclamation commission affirms or modifies the proposed amount of the penalty, the person so assessed shall have thirty days from service of the commission's written decision, unless otherwise provided by Chapter 1513. of the Revised Code, within which to pay such amount in full, or file an appeal with the court of appeals.

(I) Final assessment and payment of penalty.

(1) If the person to whom a notice of violation or cessation order is issued fails to request a review as provided in paragraph (G) of this rule, a proposed assessment shall become a final order of the chief and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(2) If any party requests judicial review of a final order of the reclamation commission, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (I)(3) of this rule, the escrowed funds shall be transferred to the chief in payment of the penalty, and the escrow shall end.

(3) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this rule, the reclamation commission shall, within thirty days of receipt of the order, refund to the person assessed all or part of the escrowed amount, with interest, from the date of payment into escrow to the date of the refund.