

## **IC 14-34-16**

### Chapter 16. Penalties

#### **IC 14-34-16-1**

##### **Civil penalties; violations**

Sec. 1. (a) The director:

(1) may, after an opportunity for a public hearing under IC 4-21.5-3, assess a civil penalty on a permittee who violates:

(A) this article; or

(B) IC 13-4.1 (before its repeal); and

(2) shall, if the director has issued a cessation order for the violation to the permittee, assess a civil penalty.

(b) The civil penalty assessed under this section may be in an amount of not more than five thousand dollars (\$5,000) for each violation.

(c) If an operator fails to correct a violation for which a notification has been issued under:

(1) IC 13-4.1-11-4 (before its repeal); or

(2) IC 14-34-15-5;

in the allotted time for correction, the director may, if a civil penalty is assessed, assess a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the failure or violation continues.

(d) The time for correction of a violation does not end until the entry of:

(1) a final order by the director, for review proceedings initiated by the operator if the director orders, after an expedited hearing, the suspension of the abatement requirements of the citation based upon a determination that the operator will suffer irreparable loss or damage from the application of those requirements; or

(2) an order of the court, for review proceedings initiated by the operator if the court orders the suspension of the abatement requirements of the citation.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-16-2**

##### **Amount of penalty**

Sec. 2. In determining the amount of a civil penalty under section 1 of this chapter, the director shall consider the following:

(1) The permittee's history of previous violations at the surface coal mining and reclamation operation.

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

(3) The permittee's negligence.

(4) The demonstrated good faith of the permittee to achieve rapid compliance after notification of the violation.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-16-3**

#### **Each day considered separate violation**

Sec. 3. Each day in violation of:

- (1) IC 13-4.1 (before its repeal); or
- (2) this article;

may be considered a separate violation for purposes of assessing a civil penalty.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-16-4**

#### **Order to pay penalty; hearing**

Sec. 4. (a) Upon the issuance of a notice or an order charging that a violation of IC 13-4.1 (before its repeal) or this article has occurred, the director shall, within thirty (30) days, do the following:

- (1) Inform the permittee of the amount of penalty assessed.
- (2) Issue an order to the permittee to pay the penalty.

(b) The permittee has thirty (30) days from receipt of the order to:

- (1) pay the penalty; or
- (2) request a hearing to contest the amount.

(c) If the permittee requests a hearing, the permittee shall forward an amount equal to the assessed penalty to the director, who shall place the amount in an escrow account. A permittee who desires to contest the violation or amount of penalty assessed but fails to forward the amount to the director waives all legal rights to contest the violation or amount of penalty assessed.

(d) The commission:

- (1) shall conduct the hearing in accordance with IC 4-21.5-3; and
- (2) may consolidate this hearing with a hearing conducted under IC 14-34-15 if appropriate.

(e) If it is determined at the hearing that the civil penalty is appropriate, the commission shall issue to the permittee a written decision and an order to pay the penalty within thirty (30) days of receipt of the order.

(f) If, through administrative or judicial review of the assessed penalty:

- (1) it is determined that a violation did not occur; or
- (2) the amount of penalty is reduced;

the director shall, within thirty (30) days of the decision, remit the appropriate amount to the permittee with interest at the rate of eight percent (8%) per year.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-16-5**

#### **Action by attorney general to recover civil penalties owed**

Sec. 5. The director may request the attorney general to institute an action in an appropriate court in the county in which the permittee's surface coal mining and reclamation operation is located for recovery of civil penalties owed under this article.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-16-6**

#### **Criminal violations**

Sec. 6. (a) A person who:

(1) knowingly violates:

(A) a condition of a permit issued under:

(i) IC 13-4.1 (before its repeal); or

(ii) this article;

(B) this article; or

(C) an order issued under:

(i) IC 13-4.1 (before its repeal); or

(ii) this article; or

(2) knowingly makes a false statement, representation, or certification in an application, a record, a report, a plan, or other document filed with or required to be maintained by the director;

commits a Class A misdemeanor.

(b) A person who:

(1) violates subsection (a); or

(2) discloses confidential information to an unauthorized person;

is subject to IC 14-34-15-5, IC 14-34-15-6, or sections 1 through 5 of this chapter, as appropriate.

(c) If a person violates subsection (a), the person's application for a permit may be denied.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-16-7**

#### **Interference with director in performance of director's duties**

Sec. 7. A person who willfully resists, prevents, impedes, or interferes, except as otherwise provided by law, with the director or the director's representative in the performance of duties under this article commits a Class A misdemeanor.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-16-8**

#### **Violations of permit and noncompliance by corporate permittee**

Sec. 8. If a corporate permittee:

(1) violates a condition of a permit issued under this article; or

(2) fails or refuses to comply with an order issued by the director;

a director, an officer, or an agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal is subject to the same penalties under sections 1 through 6 of this chapter that are imposed on an individual permittee.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-16-9**

#### **Penalties deposited in fund**

Sec. 9. All civil penalties collected under this chapter shall be deposited in the post-1977 abandoned mine reclamation fund

established by IC 14-34-6-15.  
*As added by P.L.1-1995, SEC.27.*