

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.

R647-7. Inspection and Enforcement: Civil Penalties.

R647-7-101. Information on Civil Penalties.

1. Objectives. Civil penalties are assessed under Section 40-8-9.1 of the Utah Mined Land Reclamation Act and R647-7 to deter violations and to ensure maximum compliance with the terms and purposes of the Utah Mined Land Reclamation Act on the part of the minerals mining industry.

2. How Assessments Are Made. The Division will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R647-7 to determine whether a civil penalty will be assessed and the amount of the penalty.

R647-7-102. Penalty To Be Assessed.

1. The assessment officer will assess a penalty for each cessation order.
2. The assessment officer may assess a penalty for each notice of violation under the point system described in R647-7-103. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R647-7-103.
3. Within 15 days of service of a notice of violation or cessation order, the permittee or operator may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

R647-7-103. Point System for Penalties.

1. Amount of Penalty. In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

1.11. The permittee or operator's history of previous violations at the particular mining operation and reclamation, regardless of whether any led to a civil penalty assessment. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R647-7-103.2.11.111 or R647-7-103.2.11.112.

1.12. The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit area.

1.13. The degree of fault of the permittee or operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

1.14. The permittee or operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement.

1.15. Consideration will also be given to whether the permittee or operator gained any economic benefit as a result of a failure to comply.

2. Assessment of Points.

2.11. History of Previous Violations. The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points, will be determined and the points assigned with respect to the particular mining operation and reclamation. Points will be assigned as follows:

2.11.111. A violation will 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 will be counted for only three years;

2.11.112. No violation for which the notice or order has been vacated will be counted; and

2.11.113. Each violation will be counted without regard to whether it led to a civil penalty assessment.

2.12. Seriousness. The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

2.12.111. Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assessed according to the following table:

TABLE 1

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1 - 4
Unlikely	5 - 9
Likely	10 - 19
Occurred	20

2.12.112. Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

2.12.113. Alternative to R647-7-103.2.12.111 and R647-7-103.2.12.112, in the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R647-7-103.2.12.111 and R647-7-103.2.12.112, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

2.13. Degree of Fault.

2.13.111. The assessment officer will assign up to 30 points based on the degree of fault of the permittee or operator in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

2.13.111.A. A violation which occurs through no fault of the permittee or operator, or by inadvertence which was unavoidable by the exercise of reasonable care, will be assigned no penalty points for degree of fault;

2.13.111.B. A violation which is caused by fault of the operator will be assigned 15 points or less, depending on the degree of fault. Fault means the failure of a permittee or operator to prevent the occurrence of any violation of his or her permit or any requirement of the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care; and

2.13.111.C. A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

2.13.112. In calculating points to be assigned for degree of fault, the acts of all persons working at the mining operations on the mine site will be attributed to the permittee or operator, unless that permittee or operator establishes that they were acts of deliberate sabotage or acts of a third-party otherwise authorized to occupy the same lands.

2.14. Good Faith in Attempting to Achieve Compliance. The assessment officer will subtract points based on the degree of good faith of the permittee or operator. Points will be assigned as follows:

2.14.111. Easy Abatement Situation. An easy abatement situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

TABLE 2

DEGREE OF GOOD FAITH	POINTS
Immediate Compliance	-11 to -20
Rapid Compliance	- 1 to -10
Normal Compliance	0

2.14.112. Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance, or the permittee or operator does not have the resources at hand to achieve compliance of the violated standard.

TABLE 3

DEGREE OF GOOD FAITH	POINTS
Rapid Compliance	-11 to -20
Normal Compliance	- 1 to -10
Extended Compliance	0

2.15. Definition of Compliance.

2.15.111. Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

2.15.112. Rapid Compliance requires evidence that the permittee or operator used diligence to abate the violation.

2.15.113. Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standards.

2.15.114. Extended Compliance means that the permittee or operator took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard; or that the plan submitted for abatement was incomplete.

2.16. The Effect on the permittee or operator's Ability to Continue in Business. Initially, it will be presumed that the permittee or operator's ability to continue in business will not be affected by the order of assessment. The permittee or operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee or operator's ability to continue in business. A reduction of the penalty, work in kind, or a special payment plan may be ordered if the information provided by the permittee or operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee or operator's ability to continue in business.

3. Determination of Amount of Penalty. The assessment officer will determine the amount of any civil penalty converting the total number of points assigned under R647-7-103.3 to a dollar amount, according to the following table:

TABLE 4

Points	Dollars
1	22
2	44

3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950

4. Whenever a violation contained in a cessation order has not been abated, a civil penalty of not less than \$750.00 will be assessed for each day during which such failure continues, except that, if the permittee or operator initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

4.11. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the Utah Mined Land Reclamation Act, after determination that the permittee or operator will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date specified in the Board final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

4.12. If the permittee or operator initiates review proceedings under the Utah Mined Land Reclamation Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to the Utah Mined Land

Reclamation Act, the extended period permitted for abatement will not end until the date specified in the court final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

R647-7-104. Waiver of Use of Formula to Determine Civil Penalty.

1. The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R647-7-103 to set the civil penalty, if they determine that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

R647-7-105. Procedures for Assessment of Civil Penalties - Proposed Assessment.

1. The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee or operator, by certified mail, within 30 days of the issuance of the notice or order.

1.11. If the mail is tendered at the address of the permittee or operator set forth in the permit application or at any address at which that permittee or operator is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R647-7-105.1 will be deemed to have been complied with upon such tender.

1.12. Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee or operator:

1.12.111. Proves actual prejudice as a result of the delay; and

1.12.112. Makes a timely objection to the delay.

2. Unless a conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R647-7-105.1, within 30 days after the date the violation is abated.

R647-7-106. Procedures for Informal Conference.

1. The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment, upon written request of the permittee or operator, if the request is received within 30 days from the date the proposed assessment or reassessment is received by the permittee or operator.

2. Informal Conference Scheduling and Findings.

2.11. The Division will assign a conference officer to hold conferences. The conference will be informal. The conference will be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED: That a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee or operator proves actual prejudice as a result of the delay.

2.12. The Division will provide notice of the time and place of the conference to the operator or permittee and post notice of the conference at the main Division office at least five days before the conference. Any person may attend the conference.

2.13. The conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either:

2.13.111. Settle the issues, in which case a settlement agreement will be prepared and signed by the conference officer on behalf of the Division and by the permittee or operator;

2.13.112. Affirm, raise, lower, or vacate the penalty; or

2.13.113. Affirm, deny, modify or vacate the violation.

3. The conference officer will promptly serve the permittee or operator with a notice of his or her action in the manner provided in R647-7-105.1, and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.

4. Informal Conference Settlement Agreement.

4.11. If a settlement agreement is entered into, the permittee or operator will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.

4.12. If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to R647-7-106.2.13.112 within 30 days from the date of the rescission.

5. The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the permittee or operator is not diligently working toward resolution of the issues.

6. At formal review proceedings of the matter before the Board, no evidence as to statements made or evidence produced by one party at a conference will be introduced as evidence by another party or to impeach a witness.

R647-7-107. Requests for Formal Hearing.

1. A permittee or operator charged with a violation may contest the proposed penalty or the fact of the violation by submitting: (a) a petition to the Board; and (b) an amount equal to the proposed penalty (or, if a conference has been held, the reassessed or affirmed penalty) to the Division (to be held in escrow as provided in R647-7-107.2) within 30 days of receipt of

the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.

2. The Division will transfer all funds submitted under R647-7-107.1 to an escrow account pending completion of the administrative and judicial review process, at which time it will disburse them as provided in R647-7-108.2 or R647-7-108.3.

3. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of R641, rules of practice and procedure before the Board.

R647-7-108. Final Assessment and Payment of Penalty.

1. If the permittee or operator fails to request a hearing as provided in R647-7-107, the proposed assessment or reassessment will become a final order of the Division and the penalty assessed will become due and payable upon expiration of the time allowed to request a hearing and upon the Division fulfilling its responsibilities under Subsection 40-8-9.1(3)(e).

2. If any party requests judicial review of a final order of the Board, the proposed penalty will be held in escrow until completion of the review. Otherwise, subject to R647-7-108.3, the escrowed funds will be transferred to the Division in payment of the penalty, and the escrow will end.

3. If the final decision of the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under R647-7, the Division will within 30 days of receipt of the order refund to the permittee or operator all or part of the escrowed amount and interest accumulated, if any.

4. If the review results in an order increasing the penalty, the permittee or operator will pay the difference to the Division within 15 days after the order is received by such permittee or operator.

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