

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

R647-8. Inspection and Enforcement: Individual Civil Penalties.

R647-8-101. Information on Individual Civil Penalties.

1. The rules in R647-8 provide guidance to exercise the authority set forth in Subsection 40-8-9.1(6).
2. Individual civil penalties will be assessed by a Division-appointed assessment officer using the process described in R647-8.

R647-8-102. When an Individual Civil Penalty May Be Assessed.

1. Except as provided in R647-8-102.2, the assessment officer may assess an individual civil penalty against any corporate director, officer, or agent of a permittee or operator, or any other person who may be liable under Section 40-8-9.1 who knowingly and willfully authorized, ordered or carried out a violation, failure, or refusal.
2. The assessment officer will not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee or operator until a cessation order has been issued by the Division to the corporate permittee or operator for the violation, and the cessation order has remained unabated for 30 days.

R647-8-103. Amount of the Individual Civil Penalty.

1. In determining the amount of an individual civil penalty assessed under R647-8-102, the assessment officer will consider the criteria specified in Section 40-8-9.1, including:
 - 1.11. The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular mining operation and reclamation;
 - 1.12. 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
 - 1.13. The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure, or refusal.
2. The individual civil penalty will not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation and the assessment officer 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 Board, until abatement or compliance is achieved.

R647-8-104. Procedure for Assessment of Individual Civil Penalty.

1. Notice. The Division will serve 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.
2. Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Division 30 days after service upon the individual unless:
 - 2.11. The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Board; or
 - 2.12. The Division and the individual or responsible corporate permittee or operator agree within 30 days of 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.
3. Service. Service of notice under R647-8-104 will satisfy the standard of R641, concerning the rules of practice and procedure before the Board.

R647-8-105. Payment of Penalty.

1. No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty will be due upon issuance of the final order.
2. Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with R641, the penalty will be due upon issuance of a final Board order affirming, increasing, or decreasing the proposed penalty.
3. Abatement agreement. Where the Board and the corporate permittee, operator, 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 order from the Board stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.
4. Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties will result in referral to the Utah Attorney General for appropriate collection action.

KEY: minerals reclamation

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