**Section 245.1120 Director's Decision**

a) Upon receipt of a Notice of Violation, the Director or Director's designee shall conduct an investigation and may affirm, vacate or modify the Notice of Violation. In determining whether to affirm, vacate or modify the Notice of Violation, the Director shall consider:

1) whether the facts support the violation set forth in the Notice of Violation;

2) the seriousness of the violation, including any harm to public health, public safety, aquatic life, wildlife or the environment or damage to property;

3) the permittee's history of previous violations, including violations at other locations and under other permits.

A) A violation shall not be counted if the Notice of Violation or Director's Decision is the subject of pending administrative review by the Department under Section 245.1130, or judicial review under the Administrative Review Law and the rules adopted under that Law, or if the time to request a review has not expired, and thereafter it shall be counted for only 5 years after the date of the Department's final administrative decision or a final judicial decision affirming the Department's decision.

B) No violation for which the Notice of Violation or Director's Decision has been vacated shall be counted;

4) the degree of culpability of the permittee;

5) whether the remedial action to address the violation set forth in the Notice of Violation is completed within the time set forth in the Notice of Violation; and

6) the existence of any additional conditions or factors in aggravation or mitigation of the violation, including information provided by any person or by the permittee.

b) Modification to the Notice of Violation may include:

1) any different or additional remedial actions required to address the violation and the time within which the remedial actions must be completed;

2) assessment of administrative penalties not to exceed $5,000 a day for each and every act of violation, not to exceed $50,000;

3) probationary or permanent modification or conditions on the permit, which may include special monitoring or reporting requirements;

4) suspension of the permit; and

5) revocation of the permit.

c) The Director shall determine whether to assess administrative penalties based on the factors set forth in subsection (a). If an administrative penalty is assessed by the Department, the administrative penalty shall be computed as follows, but shall not exceed $5,000 per day for each and every act of violation:

1) Administrative violations are violations of any submission, reporting or notification requirements of this Part, including, but not limited to, providing incorrect, misleading, incomplete or materially untrue information regarding permittee registration, permit application, permit modification, permit transfer, or permit bonding, and failing to properly comply with the reporting and Department notification requirements set forth in the construction, operation, monitoring, disclosure or production requirements of this Part or of the permit, and shall be assessed on a permittee-specific basis. The Department may assess a penalty for an administrative violation as follows:

A) No previous violation of the same rule: $500.

B) One previous violation of the same rule: $1,000.

C) Two previous violations of the same rule: $1,500.

D) Three previous violations of the same rule: $2,000.

E) Four or more previous violations of the same rule: $5,000.

2) Operating violations are violations of all other requirements of this Part not covered by subsection (c)(1), including, but not limited to, operating a well required to be permitted under the Act without first obtaining a proper permit from the Department, constructing or operating a well in violation of the construction, operation, monitoring, disclosure or production requirements of this Part or of the permit. The Department may assess a penalty for an operating violation by considering elements of subsections (c)(2)(A), (B) and (C) as follows:

A) History of Violations:

i) No previous violation of the same rule: $1,000.

ii) One previous violation of the same rule: $2,500.

iii) Two previous violations of the same rule: $5,000.

iv) Three previous violations of the same rule: $7,500.

v) Four previous violations of the same rule: $10,000.

vi) Five or more previous violations of the same rule: $25,000.

B) Seriousness:

i) If the violation had a high degree of probability to cause environmental damage to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife: add $2,500; or, if the violation caused environmental damage to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife: add $10,000.

ii) If the violation created a hazard to the safety of any person: add $20,000.

C) Permittee's Actions:

i) If the permittee was previously notified of the violation using a routine inspection report (Form OG-22) in accordance with Section 245.1110 or correspondence from the Department and failed to comply: add $5,000.

ii) If the violation occurred as a result of the permittee's deliberate conduct, including lack of reasonable maintenance of equipment: add $5,000.

iii) If the violation involves a failure of surface casing or cement of surface casing: add up to $50,000, but no less than $5,000.

d) The Director or Director's designee shall serve the permittee with his or her decision at the conclusion of the investigation. The Director's Decision shall be served either *personally or by certified mail, receipt return requested, to the permittee* (Section 1-60(b) of the Act). The Director's Decision shall provide that the permittee has the right to request a hearing to contest the Director's Decision in accordance with Section 245.1130.

e) The Director's Decision shall take effect upon issuance.

f) The permittee may contest the Director's Decision by submitting *a request, in writing, within 30 days after the date of receiving* the Director's Decision, for *a hearing* in accordance *with Section* 245.1130. *Except as provided under* Section 245.1130(d)(2), *in the event a hearing is requested,* the Director's Decision *shall remain in effect until a final order is entered pursuant to the hearing.* (Section 1-60(c) of the Act)

g) Failure of the permittee to timely request a hearing, or if a civil penalty has been assessed, to timely tender the assessed civil penalty, shall constitute a failure to exhaust all administrative remedies and a waiver of all legal rights to contest the Director's Decision, including the amount of the civil penalty.

h) The permittee may, within 30 days from the date of receiving the Director's Decision, submit to the Department, in writing, any mitigating factors that permittee believes to be relevant to the violation cited in the Director's Decision.

i) Upon further investigation, the Director may enter into a settlement agreement, issue an amended Director's Decision, or issue a replacement Director's Decision.

1) A settlement agreement shall be issued to:

A) extend the amount of time provided to complete remedial action necessary to address a violation set forth in the Director's Decision; or

B) increase or reduce the civil penalty assessed in the Director's Decision; or

C) allow new permits or the transfer of existing permits to be issued during the term of the settlement agreement.

2) An amended Director's Decision shall be issued to:

A) extend the amount of time provided to complete remedial action necessary to address a violation set forth in the Director's Decision; or

B) reduce the civil penalty assessed in the Director's Decision.

3) A replacement Director's Decision shall be issued to correct an administrative error contained in the Director's Decision or the Notice of Violation.

4) The permittee shall have no right to administrative hearing associated with the issuance of a settlement agreement or an amended Director's Decision.

j) If the Director's Decision includes the assessment of an administrative penalty and the permittee named in the Director's Decision does not request a hearing in accordance with Section 245.1130, the administrative penalty assessed shall be paid to the Department in full within 30 days after receiving the Director's Decision.

k) *All* administrative penalties assessed and paid to the Department *shall be deposited in the Mines and Minerals Regulatory Fund* (Section 1-35(e) of the Act).